



भारत का राजपत्र

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No. 42] NEW DELHI, OCTOBER 12—OCTOBER 18, 2003, SATURDAY/ASVINA 20—ASVINA 26, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

मंत्रिमंडल सचिवालय

नई दिल्ली, 7 अक्टूबर, 2003

का०आ० 2954.—केंद्रीय सरकार, आतंकवादी और विध्वंसकारी क्रिया-कलाप (निवारण) अधिनियम, 1987 (1987 का अधिनियम सं. 28) की धारा 13 की उपधारा (1) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 22-3-2002 की पिछली अधिसूचना सं. 225/7/2002 ए.वी.डी.-II के अधिक्रमण में सर्व/श्री वी. सी. शाह एवं जी.ए.व्यास, अधिवक्ता अहमदाबाद को दिल्ली विशेष पुलिस स्थापना द्वारा अन्वेषित तथा प्रारम्भ किये गए नियमित मामला संख्या आर. सी. 1(एस)/93-एस.आई.यू-II, नई दिल्ली (रक्फ वलीउल्लाह हत्याकांड) तथा उससे संबंधित या उसके अनुबंधी किसी अन्य मामले में गुजरात राज्य में उपर्युक्त अधिनियम की धारा 9 के अधीन निर्दिष्ट न्यायालय, अहमदाबाद में अभियोजन चलाए जाने हेतु विशेष लोक अभियोजक नियुक्त करती है।

[सं. 225/34/2003-डी.एस.पी.ई.]
शुभा ठाकुर, अवर सचिव

CABINET SECRETARIAT

New Delhi, the 7th October, 2003

S.O. 2954.—In exercise of the powers conferred by the Proviso to Sub-section (1) of Section 13 of terrorist and disruptive activities (prevention) Act, 1987 (Act No. 28 of 1987) and in supersession of earlier Notification No. 225/7/2002-AVD-II dated 22-3-2002, the Central Government hereby appoints S/Shri V. C. Shah and G.A. Vyas Advocates, Ahmedabad as special Public Prosecutors for conducting prosecution of regular Case No. RC-1(s)/93-SIU. II/New Delhi (Rauf Valli Ullah murder case) and any other matter connected therewith or incidental thereto investigated or instituted by Delhi special Police Establishment under the said Act, in the designated court at Ahmedabad constituted under the provision of Section 9 of the aforesaid Act with the State of Gujarat.

[No. 225/34/2003-DSPE]
SHUBHA THAKUR, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

केन्द्रीय उत्पाद शुल्क पुणे III के आयुक्त का कार्यालय, पुणे

पुणे, 26 सितम्बर, 2003

संख्या 5/2003 केन्द्रीय उत्पाद शुल्क (नॉन टैरिफ)

का०आ० 2955.—भारत सरकार, वित्त तथा कंपनी कार्य मंत्रालय, राजस्व विभाग, नई दिल्ली द्वारा दिनांक 1-7-1994 को जारी की गई अधिसूचना 33/94 सीमा शुल्क (नॉन टैरिफ) के अधीन मुझे प्रदत्त अधिकारों को कार्यान्वित करते हुए, मैं, ए.एस.आर.नायर, आयुक्त, केन्द्रीय उत्पाद शुल्क पुणे-III आयुक्तालय, पुणे एतदद्वारा महाराष्ट्र राज्य के गांव:—मरकल, तालुका—खेड, जिला पुणे-412105 को सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 के अधीन तथा 100% नियांतलक्ष्यी यूनिट स्थापना हेतु, वेअरहाउसिंग स्टेशन के रूप में घोषित कर रहा हूँ।

[फा. सं. बीजीएन(30)/279/टीए/2003]

ए० एस० आर० नायर, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE, PUNE-III COMMISSIONERATE)

Pune, the 26th September, 2003

No. 5/2003, C.E. (N.T.)

S.O. 2955.—In exercise of the powers conferred on me by the Notification No. 33/94-Cus (N.T.), dated 1-7-1994, of the Government of India, Ministry of Finance & Company Affairs, Department of Revenue, I, A.S.R. Nair, the Commissioner of Central Excise, Pune-III Commissionerate, Pune, hereby declare, Village: Markal, Taluka: Khed, Dist. Pune-412105 in the State of Maharashtra to be Warehousing Station under Section-9 of the Customs Act, 1962 (52 of 1962), for setting up 100% E.O.U.'s.

[F. No. VGN(30)/279/TA/2003]

A. S. R. NAIR, Commissioner

आदेश

नई दिल्ली, 26 सितम्बर, 2003

स्टाम्प

का०आ० 2956.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतदद्वारा उस शुल्क को माफ करती है जो उक्त अधिनियम के तहत पंजाब राज्य औद्योगिक विकास निगम लिमिटेड, चंडीगढ़ द्वारा दिनांक 30-9-2002 और 31-12-2002 को आवंटित मात्र नियान्वे करोड़ तिहार लाख रुपये के समग्र मूल्य के 1 से 9973 तक की विशिष्ट संख्या वाले प्रत्येक एक-एक लाख रुपये के 11.70 प्रतिशत (कराधेय) प.रा.ओ.वि.नि. बंधपत्रों-2007 (2002-द्वितीय श्रृंखला) के रूप में वर्णित प्रोमिसरी नोटों के स्वरूप के बंधपत्रों पर प्रभार्य है।

[सं. 32/2003-स्टाम्प/फा. सं. 33/8/2003-बि.क.]

आर० जी० छाबड़ा, अवर सचिव

ORDER

New Delhi, the 26th September, 2003

STAMPS

S.O. 2956.—In exercise of the powers conferred by clause (a) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as 11.70% (taxable) PSIDC bonds—2007 (2002-IIInd Series) of rupees one lakh each bearing distinctive numbers from 1 to 9973 aggregating to rupees ninety nine crore seventy three lakh only allotted on 30-9-2002 and 31-12-2002 by the Punjab State Industrial Development Corporation Limited, Chandigarh are chargeable under the said Act.

[No. 32/2003-STAMPS/F. No. 33/8/2003-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 26 सितम्बर, 2003

स्टाम्प

का०आ० 2957.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतदद्वारा आवास एवं शहरी विकास निगम लिमिटेड, नई दिल्ली को मात्र एक करोड़ सत्तर लाख रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त निगम द्वारा जारी किए जाने वाले मात्र तीन सौ पचास करोड़ रुपये के समग्र मूल्य के 1 से 3500 तक की विशिष्ट संख्या वाले प्रोमिसरी नोटों के रूप में वर्णित 7.35 प्रतिशत हुड्को कराधेय बंधपत्र-2003 (एचडी-V) बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभार्य है।

[सं. 33/2003-स्टाम्प/फा. सं. 33/39/2003-बि.क.]

आर० जी० छाबड़ा, अवर सचिव

ORDER

New Delhi, the 26th September, 2003

STAMPS

S.O. 2957.—In exercise of the powers conferred by clause (b) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Housing & Urban Development Corporation Limited, New Delhi to pay consolidated stamp duty of rupees one crore seventy lakh only chargeable on account of the stamp duty on bonds in the nature of promissory notes described as 7.35% HUDCO Taxable Bonds-2003 (HD-V Series) bearing distinctive numbers from 1 to 3500 aggregating to rupees three hundred fifty crore only, to be issued by the said Corporation.

[No. 33/2003-STAMPS/F. No. 33/39/2003-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 26 सितम्बर, 2003

स्टाम्प

का०आ० 2958.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उप-धारा (1) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा उस शुल्क को माफ करती है जो कर्नाटक राज्य वित्त निगम, बंगलौर द्वारा प्रोमिसरी नोटों के रूप में वर्णित क.रा.वि.नि. निजी रूप से बेच कर जारी किए गए 2002-2003 के एक-एक लाख रुपये मूल्य के अस्सी करोड़ रुपये के समग्र मूल्य के बंधपत्रों पर उक्त अधिनियम के तहत प्रभार्य है।

[स. 31/2003-स्टाम्प/फा. स. 33/36/2003-बि.क.]

आर० जौ० छाबड़ा, अवर सचिव

ORDER

New Delhi, the 26th September, 2003

STAMPS

S.O. 2958.—In exercise of the powers conferred by clause (a) of Sub-section (1) of Section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby remits the duty with which the bonds in the nature of promissory notes described as KSFC Private Placement Bonds—2002-2003 of rupees one lakh each aggregating to rupees eighty crore only issued by the Karnataka State Financial Corporation, Bangalore are chargeable under the said Act.

[No. 31/2003-STAMPS/F. No. 33/36/2003-ST]

R. G. CHHABRA, Under Secy.

संचार और सूचना प्रौद्योगिकी मंत्रालय

(डाक विभाग)

नई दिल्ली, 3 अक्टूबर, 2003

का०आ० 2959.—राजभाषा नियम, (संधि के शासकीय प्रयोजन के लिए प्रयोग), 1976 के नियम 10 के उप नियम (4) के अनुसरण में केन्द्र सरकार डाक विभाग के निम्नलिखित अधीनस्थ कार्यालयों को, जिनके 80 प्रतिशत कर्मचारियों (ग्रुप “ब” कर्मचारियों को छोड़कर) ने हिन्दी का कार्य साधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

1. डाकघर, लोनावाला-410401
2. डाकघर, पंचगनी-412805
3. डाकघर, महाबलेश्वर-412806

[स. 11017-2/2003-रा.भा.]

डॉ० पुष्पलता सिंह, निदेशक (राजभाषा)

MINISTRY OF COMMUNICATIONS & IT

(Department of Posts)

New Delhi, the 3rd October, 2003

S.O. 2959.—In pursuance of Rule 10(4) of the Official Language (use for official purposes of the Union) Rules,

1976, the Central Government hereby notifies the following subordinate offices of the Department of Posts where 80 per cent staff has acquired the working knowledge of Hindi.

1. Post Office, Lonavala-410404
2. Post Office, Mahabaleshwar—412805
3. Post Office, Panchgani—412806.

[No. 11017-2/2003-OL]

Dr. PUSHPLATA SINGH, Director (OL)

(भवन शाखा)

शुद्धिपत्र

नई दिल्ली, 10 अक्टूबर, 2003

का०आ० 2960.—डाक विभाग में संपदा अधिकारी के बतौर कार्य करने हेतु नियुक्त केन्द्रीय सरकार के राजपत्रित अधिकारियों के संबंध में दिनांक 11-9-1993 को भारत के राजपत्र के भाग-II 3(ii) में प्रकाशित अधिसूचना तथा दिनांक 19-9-1998 के का. आ. संख्या 184(अ), दिनांक 9-6-2001 के सा. का. नि. संख्या 1280 तथा दिनांक 23-3-2002 के का. आ. संख्या 1011 की अधिसूचनाओं द्वारा जारी संशोधनों के संदर्भ में उत्तरांचल डाक सर्किल के संबंध में निम्नलिखित अतिरिक्त परिवर्तन किए जाएः :

क्रम संक्रिल का	अधिकारियों का	क्षेत्राधिकार
सं. नाम	पदनाम	टिप्पणी
1. उत्तरांचल	विरचित डाकघर अधीक्षक, देहरादून डिवीजन, कार्यालय मुख्य पोस्टमास्टर जनरल, उत्तरांचल सर्किल, देहरादून	उत्तरांचल सर्किल

[स. 2-119/90-भवन]

राजेन्द्र कुमार, सहायक महानिदेशक (भवन)

(Building Branch)

CORRIGENDUM

New Delhi, the 10th October, 2003

S.O. 2960.—In the Notification published in the Gazette of India in Part-II 3 (ii) dated 11-9-1993 in respect of the Central Govt. Gazetted Officers appointed to act as Estate Officers in the Department of Posts and amendments issued vide Notifications published with S. O. No. 184(E) dated 19-9-1998 G.S.R. No. 1280 dated 9-6-2001 and S.O. No. 1011 dated 23-3-2002, the following further change may be made in r/o Uttarakhand Postal Circle :—

S. No.	Name of Circle	Designation of the Officers	Territorial Jurisdiction	Remarks
1.	Uttaranchal	Senior Superintendent of Post offices,	Uttaranchal Circle	

S.No.	Name of Circle	Designation of the Officers	Territorial Jurisdiction	Remarks
	Dehradun	Division O/o Chief Postmaster General, Uttaranchal Circle, Dehradun		

[No. 2-119/90-Bldgs.]

RAJINDER KUMAR, Asstt. Director General (Bldgs.)

स्वास्थ्य और परिवार कल्याण मंत्रालय

(स्वास्थ्य विभाग)

नई दिल्ली, 1 अक्टूबर, 2003

का०आ० 2961.—केन्द्र सरकार ने भारतीय आयुर्विज्ञान परिषद् अधिनियम, 1956 (1956 का 102) की धारा 3 की उप धारा (1) के खण्ड (क) के अनुसरण में और गुजरात सरकार से परामर्श करके डॉ. अमृत लाल कालीदास पटेल को इस अधिसूचना के जारी होने की तारीख से भारतीय आयुर्विज्ञान परिषद् के एक सदस्य के रूप में मनोनीत किया है।

अतः, अब, उक्त अधिनियम की धारा 3 की उपधारा (1) के उपबंध के अनुसरण के केन्द्रीय सरकार एतद्वारा भारत सरकार के तत्कालीन स्वास्थ्य मंत्रालय की दिनांक 9 जनवरी, 1961 की अधिसूचना संख्या का. आ. 138 में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त अधिसूचना में “धारा 3 की उपधारा (1) के खण्ड (क) के अर्धीन मनोनीत” शीर्षक के अंतर्गत क्रम संख्या 14 और उससे संबंधित प्रविष्टियों के स्थान पर निम्नलिखित क्रम संख्या और प्रविष्टियां जोड़ी जाएंगी, अर्थात् :—

14. डॉ. अमृत कालीदास पटेल,

विजापुर (एन. जी.)

जिला-मेहसाना

गुजरात

[सं. वी-11013/1/2003-एम. ई. (नीति-1)]

पी० जी० कलाधरण, अवर सचिव

MINISTRY OF HEALTH & FAMILY WELFARE

(Department of Health)

New Delhi, the 1st October, 2003

S.O. 2961.—Whereas the Central Government, in pursuance of clause (a) of Sub-section (1) of Section 3 of the Indian Medical Council Act, 1956 (102 of 1956) and in consultation with the Government of Gujarat have nominated Dr. Amritlal Kalidas Patel to be a member of the Medical Council of India with effect from the date of issue of this notification.

Now, therefore, in pursuance of the provision of Sub-section (1) of Section 3 of the said Act, the Central Government hereby makes the following further amendment

in the notification of the Government of India in the then Ministry of Health number S. O. 138 dated the 9th January, 1960, namely :

In the said notification, under the heading, ‘Nominated under clause (a) of Sub-section (1) of Section 3’, for serial number 14 and the entries thereto, the following serial number and entries shall be substituted, namely :—

“14. Dr. Amritlal Kalidas Patel, Govt. of Gujarat”
Vijapur (N. G.),
Dist. Mehsana,
Gujarat

[No. V-11013/1/2003-ME(Policy-1).]

P. G. KALADHARAN, Under Secy.

कृषि मंत्रालय

(कृषि अनुसंधान और शिक्षा विभाग)

(भारतीय कृषि अनुसंधान परिषद्)

नई दिल्ली, 7 अक्टूबर, 2003

का०आ० 2962.—भारतीय कृषि अनुसंधान परिषद् द्वारा निर्मित स्थाई वित्त समिति के विनियमों के विनियम 2(iv) के अनुसरण में और कृषि उत्पाद उपकर अधिनियम, 1940 की धारा 7(2) में निहित प्रावधान के अनुसरण में शासी निकाय ने स्थाई वित्त समिति के निम्नलिखित सदस्य के नामांकन को दिनांक 14 मार्च, 2003 से 13 मार्च, 2004 तक 1 वर्ष की अवधि के लिए अथवा शासी निकाय में उनकी अवधि समाप्त होने में जो भी पहले हो अथवा यदि उनके उत्तराधिकारी की उनकी अवधि समाप्त होने के पहले विधिवत् रूप से चयन नहीं हो पाने पर उनके चयन तक की अवधि के लिए स्वीकृति दी है।

प्रो. के. वी. पीटर

कुलपति,

केरल कृषि विश्वविद्यालय,

वेल्लानिक्कारा,

डाकघर-त्रिसुर-680656 (केरल)

[फा. सं. 6(1)/2003-गवर्नेस सैल]

शशि मिश्रा, अपर सचिव

MINISTRY OF AGRICULTURE

(Department of Agricultural Research and Education)

(Indian Council of Agricultural Research)

New Delhi, the 7th October, 2003

S.O. 2962.—In pursuance of Regulation 2(iv) of the Standing Finance Committee Regulations, framed by the Indian Council of Agricultural Research and in pursuance of provision contained in Section 7(2) of the A. P. Cess Act, 1940, the Governing Body has approved the nomination of the following Member to the Standing Finance Committee for a period of one year with effect from 14th March, 2003 to 13th March, 2004 or in case his successor has not been duly elected before the expiry of the term until his election

or on the expiry of his term on the Governing Body whichever is earlier.

1. Prof. K. V. Peter
Vice-Chancellor
Kerala Agricultural University
Vellanikkara
P. O. Thrissur-680 656
Kerala.

[F. No. 6(1)/2003-Gov. Cell]
SHASHI MISRA, Addl. Secy.

रसायन और उर्वरक मंत्रालय
(रसायन और पेट्रो रसायन विभाग)

आदेश

नई दिल्ली, 3 अक्टूबर, 2003

का०आ० 2963.— सरकारी परिसर (अनधिकृत दखल को निष्कासित करना) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्र सरकार निम्नलिखित सारणी के कॉलम (1) में उल्लिखित अधिकारियों को, सरकार के राजपत्रित अधिकारी के समकक्ष अधिकारी होने पर प्रस्तावित उक्त अधिनियम के लिए सम्पदा अधिकारी नियुक्त करते हैं, जो प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त सारणी के कॉलम (2) की प्रविष्टियों में विनिर्दिष्ट सरकारी परिसर के संबंध में उनके अधिकारी क्षेत्र की स्थानीय सीमा तक उक्त अधिनियम के अंतर्गत या द्वारा सम्पदा अधिकारी के कार्य का निर्वहन करेंगे।

सारणी

अधिकारी का पदनाम	सरकारी परिसर की श्रेणी तथा अधिकारी क्षेत्र की स्थानीय सीमा
1	2
1. इंडियन ड्रग्स एंड फार्मास्युटिकल्स लिमिटेड, ऋषिकेश में कार्यपालक	ऋषिकेश संयंत्र तथा इसके प्रशासनिक नियंत्रण के अंतर्गत परिसर जिसमें संयंत्र का भवन भी शामिल है।
2. इंडियन ड्रग्स एंड फार्मास्युटिकल्स लिमिटेड, मुजफ्फरपुर में कार्यपालक	मुजफ्फरपुर संयंत्र तथा इसके प्रशासनिक नियंत्रण के अंतर्गत परिसर जिसमें संयंत्र का भवन भी शामिल है।
3. इंडियन ड्रग्स एंड फार्मास्युटिकल्स लिमिटेड, चेन्नई में कार्यपालक	चेन्नई संयंत्र तथा इसके प्रशासनिक नियंत्रण के अंतर्गत परिसर जिसमें संयंत्र का भवन भी शामिल है।
4. इंडियन ड्रग्स एंड फार्मास्युटिकल्स लिमिटेड, हैदराबाद में उप प्रबंधक	हैदराबाद संयंत्र तथा इसके प्रशासनिक नियंत्रण के अंतर्गत परिसर जिसमें संयंत्र का भवन भी शामिल है।

1	2
5. इंडियन ड्रग्स एंड फार्मास्युटिकल्स लिमिटेड, गुडगांव में कारखाना प्रबंधक	गुडगांव संयंत्र तथा इसके प्रशासनिक नियंत्रण के अंतर्गत परिसर जिसमें संयंत्र का भवन भी शामिल है।

[फा. सं. 7(16)/2003-पीआई-IV]
गोपाल कृष्ण, उप सचिव

MINISTRY OF CHEMICALS AND FERTILISERS

(Department of Chemicals and Petrochemicals)

ORDER

New Delhi, the 3rd October, 2003

S. O. 2963.—In exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officers mentioned in column (1) of the Table below, being officers equivalent to the rank of Gazetted Officer of Government to be estate officer for the purposes of the said Act, who shall exercise the powers conferred, and perform the duties imposed, on the estate officers by or under the said Act within the local limits of their respective jurisdiction in respect of the public premises specified in the corresponding entries in column (2) of the said Table.

Table

Designation of officer	Categories of public premises and local limits of jurisdiction
(1)	(2)
1. Executive in Indian Drugs and Pharmaceuticals Limited, Rishikesh	Premises belonging to and under the administrative control of the plant at Rishikesh including the area of the plant building.
2. Executive in Indian Drugs and Pharmaceuticals Limited, Muzaffarpur	Premises belonging to and under the administrative control of the plant at Muzaffarpur including the area of the plant building.
3. Executive in Indian Drugs and Pharmaceuticals Limited, Chennai	Premises belonging to and under the administrative control of the plant at Chennai including the area of the plant building.
4. Deputy Manager in Indian Drugs and Pharmaceuticals Limited, Hyderabad	Premises belonging to and under the administrative control of the plant at Hyderabad including the area of the plant building.

(1) (2)

5. Factory Manager in Indian Drugs and Pharmaceuticals Limited, Gurgaon

Premises belonging to and under the administrative control of the plant at Gurgaon including the area of the plant building.

[F. No. 7(16)/2003-PI-IV]
GOPAL KRISHAN, Dy. Secy.

कोयला मंत्रालय

नई दिल्ली, 10 अक्टूबर, 2003

का००३३० २९६४.—केन्द्रीय सरकार राजभाषा (संघ के शासकीय प्रयोजन के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, कोयला मंत्रालय के अधीन सेन्ट्रल कोलफील्ड्स लि. रांची के निम्नलिखित क्षेत्रीय कार्यालयों को जिनके 80% से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

1. क्षेत्रीय कार्यालय अरगाढ़ा, हजारीबाग (झारखण्ड)
2. क्षेत्रीय कार्यालय हजारीबाग, हजारीबाग (झारखण्ड)
3. क्षेत्रीय कार्यालय पिपरवारा, रांची (झारखण्ड)
4. क्षेत्रीय कार्यालय ढोरी, बोकारो (झारखण्ड)

[फा. सं. ई.-12019/1/99-हिंदी]
गार्गी मुखर्जी, निदेशक

MINISTRY OF COAL

New Delhi, the 10th October, 2003

S.O. 2964.—In pursuance of sub-rule (4) of the Rule 10 of the Official Languages (use for official purposes of the union) Rules, 1976 the Central Government, hereby, notifies the following Regional Offices of Office of the Central Coalfields Ltd. under the Ministry of Coal, whereof more than 80% staff have acquired working knowledge of Hindi.

1. Regional Office, Arhaga, Hazaribagh (Jharkhand)
2. Regional Office, Hazaribagh, Hazaribagh (Jharkhand)
3. Regional Office, Piparwara, Ranchi (Jharkhand)
4. Regional Office, Dhori, Bokaro (Jharkhand)

[F. No. E-12019/1/99-Hindi]
GARGI MUKHERJEE, Director

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली, 9 अक्टूबर, 2003

का००३० २९६५.—केन्द्रीय सरकार का लोकहित में यह आवश्यक प्रतीत होता है कि महाराष्ट्र राज्य में पानेवाडी (मनमाड) संस्थापन से मध्यप्रदेश राज्य में मांगल्या (इंदौर) तक पेट्रोलियम उत्पादों

के परिवहन के लिए भारत पेट्रोलियम कॉरपोरेशन लिमिटेड द्वारा एक विस्तार पाइपलाइन बिछाइ जानी चाहिए;

और, केन्द्रीय सरकार को ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह प्रतीत होता है कि उस भूमि में जो इससे उपबद्ध अनुसूची में वर्णित है, जिसमें उक्त पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए;

अतः अब केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उन भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको इस अधिसूचना से युक्त भारत के राजपत्र, की प्रतियाँ साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाने के सम्बन्ध में श्री वी. पी. पाठक, सक्षम प्राधिकारी, मुंबई-मनमाड पाइपलाइन विस्तार परियोजना, भारत पेट्रोलियम कॉरपोरेशन लिमिटेड, सी/19-ए, स्क्रीन नं. 78, स्लाइस नं. 5, ए.बी. रोड इंदौर-452010 (मध्यप्रदेश) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील : धार	जिला : धार	राज्य : मध्यप्रदेश
ग्राम का नाम	सर्वे नम्बर	क्षेत्रफल हैक्टेयर
1. सोरड्यापुरा	148/1, 148/2 156 128	0.1030 0.0960 0.1150
2. पीरघाटी	17 15/1 क, 15/1 ख } 15/1 ग, 15/2 ख }	0.2700 0.1118
3. अम्बापुरा	13/3	0.1940
4. आड़ाबरडा	4	0.0560
5. जूनीढाल	21	0.1445
6. जामनजिरी	65/1, 65/2 58/1, 58/2 55 65/3	0.0655 0.0606 0.0960 0.0760
7. कालीबेल	19/1, 19/2 24/1 18 10/1, 10/2 8	0.0235 0.0220 0.1560 0.0097 0.0600

[फा. सं. आर-31015/36/2001-ओ० आर०-II]

हरीश कुमार, अवर सचिव

MINISTRY OF PETROLEUM AND NATURAL GAS

New Delhi, the 9th October, 2003

S.O. 2965.—Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum products from the Panewadi (Manmad) terminal in the State of Maharashtra, an extension pipeline to Manglyia (Indore) in the State of Madhya Pradesh should be laid by Bharat Petroleum Corporation Limited ;

And whereas it appears to the Central Government that for the purpose of laying such pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed hereto ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein ;

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which copies of the Gazette of India containing this notification are made available to the public, object in writing to the laying of the pipeline under the land to Shri V. P. Pathak, Competent Authority, Mumbai-Manmad Pipeline Extension Project, Bharat Petroleum Corporation Limited, C/19-A, Scheme No. 78, Slice No. 5, A. B. Road, Indore-452010 (Madhya Pradesh).

SCHEDULE

Tehsil : Dhar District : Dhar State : Madhya Pradesh

Name of Village	Survey No.	Area in Hectare
1	2	3
1. Sordyapura	148/1, 148/2	0.1030
	156	0.0960
	128	0.1150
2. Pirgati	17	0.2700
	15/1 K, 15/1 KH } 15/1 G, 15/2 }	0.1118
3. Ambapura	13/3	0.1940
4. Adabarda	4	0.0560
5. Junidhal	21	0.1445
6. Jamanjhiri	65/1, 65/2	0.0655
	58/1, 58/2	0.0606

	1	2	3
		55	0.0960
		65/3	0.0760
7. Kalibel	19/1, 19/2	0.0235	
	24/1	0.0220	
	18	0.1560	
	10/1, 10/2	0.0097	
	8	0.0600	

[F. No. R-31015/36/2001-OR-II]

HARISH KUMAR, Under Secy.

नई दिल्ली 14 अक्टूबर, 2003

का०आ० 2966.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का.आ. 1609 तारीख 28 मई, 2003 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में, सलाया-मथुरा पाइपलाइन प्रणाली परियोजना के विमगाम-कोयली सेक्षण के संवर्धन के कार्यान्वयन के लिए, गुजरात राज्य में विमगाम से कोयली तक अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉरपोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी ;

और उक्त अधिसूचना की प्रतियाँ जनता को दिनांक 18 जून, 2003 तक उपलब्ध करा दी गई थीं ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाना चाहिए ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए घोषणा करती है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाता है ;

और केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाय सभी विल्लंगमों से मुक्त इंडियन ऑयल कॉरपोरेशन लिमिटेड में निहित होगा ।

अनुसूची						1	2	3	4	5	6
तालुका : साणंद जिला : अहमदाबाद राज्य : गुजरात			क्षेत्रफल			831	0	00	90		
गाँव का नाम	सर्वे संख्या	उप-खण्ड संख्या	हेक्टर	एयर	कर्ग मीटर	839	0	05	98		
1	2	3	4	5	6	838	0	01	84		
साणंद	1034		0	05	32	840	0	06	74		
	1035	1	0	00	20	841	0	03	47		
	1025	1	0	01	15	773	0	01	69		
	1025	2	0	03	58	771	0	15	31		
	1013	2	0	04	06	772	0	07	75		
	1014	1	0	04	99						
	1015	1	0	01	79	[फा. सं. आर. 25011/45/2001-ओ.आर.-I]					
	1015	2	0	02	62						
	998		0	04	99	रेणुका कुमार, अवर सचिव					
कोलट	629	1	0	03	06						
	624		0	11	08	New Delhi, the 14th October, 2003					
	623		0	00	66						
	613	1	0	02	56	S.O. 2966.—Whereas by the notification of the					
	613	2	0	04	08	Government of India in the Ministry of Petroleum and					
	612		0	07	75	Natural Gas number S.O. 1609 dated 28th May, 2003 issued					
	611	1	0	03	86	under Sub-section (1) of Section 3 of the Petroleum and					
	611	2	0	02	39	Minerals Pipelines (Acquisition of Right of User in Land)					
	642		0	03	30	Act, 1962 (50 of 1962), (hereinafter referred to as the said					
	609	1	0	00	87	Act) the Central Government declared its intention to					
	601		0	02	34	acquire the right of user in the lands specified in the					
	643		0	01	59	Schedule appended to that notification for the purpose of					
	600	1	0	05	80	laying pipeline for the transportation of Crude Oil from					
	600	2	0	02	29	Viramgam to Koyli in the State of Gujarat, a pipeline should					
	599	1+2	0	04	92	be laid by the Indian Oil Corporation Limited for					
	644		0	01	02	implementing the Augmentation of Viramgam—Koyli					
	673		0	08	84	Section of Salaya-Mathura Pipeline System;					
	725		0	00	66	And, whereas, copies of the said notification were					
676+677+678			0	12	86	made available to the public on 18-06-2003;					
	679		0	00	48	And whereas, the Competent Authority has under					
सनाथल	829		0	09	80	sub-section (1) of Section 6 of the said Act has submitted					
	830		0	07	32	his report to the Central Government;					

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the lands specified in the Schedule appended to this notification area hereby acquired;

And further, in the exercise of the powers conferred by sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE			1	2	3	4	5	6
Taluka : Sanand District : Ahmedabad State : Gujarat			Sanathal	839		0	05	98
				838		0	01	84
				840		0	06	74
				841		0	03	47
				773		0	01	69
				771		0	15	31
				772		0	07	75
Name of Survey Sub-Division			Area	Hectare	Are	Sq. Mtr.		
the Village No.								
1	2	3	4	5	6			
Sanand	1034		0	05	32			
	1035	1	0	00	20			
	1025	1	0	01	15			
	1025	2	0	03	58			
	1013	2	0	04	06			
	1014	1	0	04	99			
	1015	1	0	01	79			
	1015	2	0	02	62			
	998		0	04	99			
Kolat	629	1	0	03	06			
	624		0	11	08			
	623		0	00	66			
	613	1	0	02	56			
	613	2	0	04	08			
	612		0	07	75			
	611	1	0	03	86			
	611	2	0	02	39			
	642		0	03	30			
	609	1	0	00	87			
	601		0	02	34			
	643		0	01	59			
	600	1	0	05	80			
	600	2	0	02	29			
	599	1+2	0	04	92			
	644		0	01	02			
	673		0	08	84			
	725		0	00	66			
	676+677+678		0	12	86			
	679		0	00	48			
Sanathal	829		0	09	80			
	830		0	07	32			
	831		0	00	90			

[F. No. R. 25011/45/2001-OR-I]

RENUKA KUMAR, Under Secy.

नई दिल्ली 14 अक्टूबर, 2003

का०आ० 2967.—केन्द्रीय सरकार ने पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) के अधीन जारी भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1608 तारीख 28 मई, 2003 द्वारा उस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में, सलाया-मथुरा पाइपलाइन प्रणाली परियोजना के विरमगाम-कोयली सेक्षन के स्वर्धन के कार्यान्वयन के लिए, गुजरात राज्य में विरमगाम से कोयली तक अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाने के प्रयोजन के लिए उपयोग के अधिकार का अर्जन करने के लिए अपने आशय की घोषणा की थी ;

और उक्त अधिसूचना की प्रतियाँ जनता को दिनांक 18 जून, 2003 तक उपलब्ध करा दी गई थी ;

और सक्षम प्राधिकारी ने उक्त अधिनियम की धारा 6 की उपधारा (1) के अधीन केन्द्रीय सरकार को अपनी रिपोर्ट दे दी है ;

और, केन्द्रीय सरकार का उक्त रिपोर्ट पर विचार करने के पश्चात् यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट भूमि में उपयोग के अधिकार का अर्जन किया जाता है ;

अतः, अब, केन्द्रीय सरकार, उक्त अधिनियम की धारा 6 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए यह निदेश देती है कि उक्त भूमि में उपयोग का अधिकार इस घोषणा के प्रकाशन की तारीख से केन्द्रीय सरकार में निहित होने की बजाय सभी विलंगमों से मुक्त इंडियन ऑयल कॉर्पोरेशन लिमिटेड में निहित होगा ।

अनुसूची

तालुका : विरामगाम जिला : अहमदाबाद राज्य : गुजरात

गाँव का नाम	मर्के मंड़वा	उप-खण्ड मंड़वा	क्षेत्रफल		
			हेक्टर	एकर	वर्ग मीटर
1	2	3	4	5	6
हांसलपुर	677	1	0	10	58
सेरेश्वर	676		0	12	20
	992		0	1	48
	685	2	0	08	33
	685	3	0	04	48
26+28+29			0	07	70
667	1+2		0	05	20

[फा. सं. आर. 25011/45/2001-ओ.आर.-I]

रेणुका कुमार, अवर सचिव

New Delhi, the 14th October, 2003

S. O. 2967.—Whereas by the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1608 dated 28th May, 2003 issued under Sub-section (1) of Section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), (hereinafter referred to as the said Act) the Central Government declared its intention to acquire the right of user in the lands specified in the Schedule appended to that notification for the purpose of laying pipeline for the transportation of Crude Oil from Viramgam to Koyli in the State of Gujarat, a pipeline should be laid by the Indian Oil Corporation Limited for implementing the augmentation of Viramgam—Koyli Section of Salaya-Mathura Pipeline System:

And, whereas, copies of the said notification were made available to the public on 18-06-2003;

And whereas, the Competent Authority has under Sub-section (1) of Section 6 of the said Act has submitted his report to the Central Government;

And whereas, the Central Government, after considering the said report is satisfied that the right of user in the land specified in the Schedule appended to this Notification should be acquired;

Now, therefore, in exercise of the powers conferred by Sub-section (1) of Section 6 of the said Act, the Central Government hereby declares that the right of user in the lands specified in the Schedule appended to this notification area hereby acquired;

And further, in the exercise of the powers conferred by Sub-section (4) of Section 6 of the said Act, the Central Government hereby directs that the right of user in the said land shall instead of vesting in the Central Government, vest from the date of publication of this declaration, in the Indian Oil Corporation Limited free from all encumbrances.

SCHEDULE

Taluka : Viramgam District : Ahmedabad State : Gujarat

Name of the Village	Survey No.	Sub-Division No.	Area		
			Hectare	Acre	Sq.Mtr.
1	2	3	4	5	6
Hansalpur	677	1	0	10	58
Sereshvar	676		0	12	20
	992		0	01	48
	685	2	0	08	33
	685	3	0	04	48
26+28+29			0	07	70
667	1+2		0	05	20

[F. No. R. 25011/45/2001-OR-I]

RENUKA KUMAR, Under Secy.

श्रम मंत्रालय

नई दिल्ली, 18 सितम्बर, 2003

का०आ० 2968.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 99/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18-9-2003 को प्राप्त हुआ था।

[सं. एल.-40012/347/2001-आई० आर० (विधि)]

बी० एम० डेविड, अवर सचिव

MINISTRY OF LABOUR

New Delhi, the 18th September, 2003

S.O. 2968.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 99/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 18-9-2003.

[No. L-40012/347/2001-IR (DU)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW

PRESENT

SHRIKANT SHUKLA

I. D. No. 99/2002

Ref. No. L-40012/347/2001 IR(DU)
dated 22-5-2002

BETWEEN

THE GYANANDRA SINGH

S/o. Sh. HARDWARI LAL

124-B/68, Govind Nagar,

KANPUR (U.P.)

AND

THE DISTRICT MANAGER TELECOM, ETAWAH

AWARD

The Government of India, Ministry of Labour vide their Order No. L-40012/347/2001 IR(DU) dated 22-5-2002 has referred following issue for adjudication to this Tribunal.

“Whether the action of the District Manager, Deptt. of Telecom, Etawah in terminating the Services of Sh. Gyanandra Singh S/o Sh. Hardwari Lal w.e.f. 1-9-1994 is legal and justified if not to what relief the concerned workman is entitled to ?

The case of the worker is that he was appointed on the post of Labour on 5-3-1983 and thereafter he has been working since May 1983 and worked for 240 days in 12 months. He was on medical leave from 1-9-89 to 15-5-91 due to the fracture in leg and when he reported on duty thereafter he was not allowed to join the duty. He represented against in action of the officers and on the orders of senior officers the applicant was allowed to work since November, 1993 but no action was taken for condoning the period of his absence. Although the worker worked till 31st Aug., 1994 and he was paid salary as usual. Since 1-9-94 the worker has been going on duty but employer did not allow the worker to sign attendance register nor they made payments after 1-9-1994. Thus, the employer terminated the worker Gyanandra Singh without giving benefit of retrenchment. It is also alleged in the statement of claim that juniors namely Santosh Kumar, Rambabu, Shalendra and Harikishan and others are still continuing in service. The termination of the worker Gyanandra Singh is illegal. The worker is therefore prayed that he should be reinstated with back wages.

O.P. has filed the W.S. and has stated that the worker Gyanandra Singh worked as casual labour. It is denied that the worker ever made met with any accident while working or was on medical leave for the period 1-9-1989 to 15-5-1991. It is further submitted by the O.P. that the casual labour was not entitled for any leave except for holiday once in a week and as such the contention of workman is false and fabricated. It is admitted by the O.P. that the worker worked from November 1993 till August 1994 as casual labour with the department for which he was paid daily wage and not the salary as alleged by him. It was only on the directions from Lucknow that the worker was taken as casual labour at Etawah on the basis of daily wage for four months and with the conditions that in these four months he will produce the evidence for the break period condoned by establishing the same with the help of documentary evidence but the worker failed to do the same and he did not produce any documentary evidence for the break period. After August 1994 he absented himself from duty. The employer has denied that the worker was not allowed to perform the duty and also not allowed to sign the attendance register. It is submitted that casual labours are not required to sign the attendance register but the attendance is marked by the officer on presence or non presence of casual labour on attendance register. It has also been submitted that the worker never attended the office of the respondents after 1-9-94 and therefore there was no reason for the opposite party to mark the attendance register or to pay any wages to him. Employer has denied that the worker was regular employee and therefore the worker is not entitled to any relief.

In the additional pleas the O.P. has stated that the workman was never recruited and was never given any appointment letter there existed no relationship of employer and employee between the worker and the O.P. It has also been alleged that the tribunal has no jurisdiction to take any cognizance in law under the I.D. Act, 1947 as the same is not attracted to this case.

O.P. absented on the date of hearing on 16-4-2003, 27-4-2003, 9-5-2003 and 12-5-2003 when the O.P. absented on 12-5-2003 it was ordered that the case be proceeded against the O.P. Ex-party and 8-7-2003 was fixed for ex-party hearing.

The worker has filed affidavit paper No. 12 in support of his case together with following documents :

1. Photo Copy of order regarding selection of the worker, Gyanandra Singh dated 5-5-83 paper No. 13/2.
2. Photo Stat Copy of letter of DET., Etawah dated 3-9-87 paper No. 13/3.
3. Photo Stat Copy of Gyanandra Singh dated 5-6-1992 paper No. 13/4.

	Sl.No.	Month & year	Working days
4. Photo Stat Copy of the application of Gyanandra Singh dated 20-9-93 paper No. 13/5.	1.	May 1983	19
5. Photo Stat Copy of Gyanandra Singh address to SDO dated 20-9-1993 paper No. 13/6.	2.	June 1983	22
6. Photo Stat Copy of Asstt. Director Door Sanchar dated 4-11-93 paper No. 13/7.	3.	July 1983	27
7. Photo Stat Copy of Dy. SDO dated 25-11-93 paper No. 13/8.	4.	August 1983	27
8. Photo Stat Copy of letter of SDO dated 17-3-1994 regarding condone of back Period Paper No.17/9.	5.	September 1983	30
9. Photo Stat Copy of letter dated 4-11-93 of SDO address to S.C. Misra paper No. 13/10.	6.	October 1983	16
10. Photo Stat Copy of letter dated 20-1-99 to Asstt. Director, Telecommunication, Lucknow address to P. Narain, SDO paper No. 13/11.	7.	November 1983	12
11. Photo Stat Copy of letter dated 14-3-94.	8.	December 1983	13
12. Photo Stat Copy of letter dated 14-3-95.	9.	January 1984	22
13. Photo Stat Copy of letter dated 12-8-95.	10.	February 1984	17
14. Postal receipt.	11.	March 1984	21
15. Photo Stat Copy of application of Gyanandra Singh dated 15-5-96.	12.	April 1984	17
16. Photo Stat Copy of application dated 10-5-97.	13.	May 1984	15
17. Photo Stat Copy of statement of working of Gyanandra Singh from May 83 to Sept. 84.	14.	June 1984	30
18. Photo Stat Copy of Gyanandra Singh from Sept. 87 to April 88.	15.	July 1984	25
19. Photo Stat Copy of Gyanandra Singh from Feb. 89 to August 89.	16.	August 1984	17
20. Photo Stat Copy of Gyanandra Singh from 11-93 to 8-94.	17.	September 1984	22

Another document which has been filed by the worker as paper No.13/19 and paper No. 17. This suggests that Gyanandra Singh worked from Sept. 1987 to April 1988 in the following manner :—

Sl. No.	Month & year	Working days
1.	September 1987	17
2.	October 1987	29
3.	November 1987	34
4.	December 1987	31
5.	January 1987	31
6.	February 1987	24
7.	1-20 March 1988	15
8.	21-31 March 1988	11
9.	April 1988	15
10.	May 1988	15

From the perusal of paper No. 13/20 and paper 18 it is made out that worker Gyanandra Singh worked from Feb. 1989 to August 1989 in the following Manner ;

Sl. No.	Month & year	Working days
1.	February 1989	13
2.	April 1989	23
3.	May 1989	31
4.	August 1989	13

Heard learned representative of the workman perused record. It is admitted fact that there is no appointment letter in respect of the employment of Gyanandra Singh. The worker has admitted in answer to a question put in that his salary was Rs. 8.50/- per day since 5-5-83. He has stated that his leg fractured on 1-9-89 and thereafter he resumed duty on November 1993. On being questioned is to what is his salary before he sustained fracture in leg he admitted that he was paid Rs. 30/- per day as wages. However, the daily wages increased to Rs. 62/- in October 1993.

From the documents filed by the worker it is made out that he worked as daily wager since 1985. From perusal of paper No. 13/18 the Copy of which is paper No. 16 it is made out that Gyanandra Singh worked in the following manner with the O.P.—

On perusal of Paper No. 13/21 the carbon copy of which is paper No. 19 shows that Gyanendra Singh worked from 11.93 to August 1994 in the following manner:

Sl. No.	Month & year	Working days
1.	11/93	5 days
2.	12/93	31 days
3.	1/94	31 days
4.	2/94	28 days
5.	3/94	31 days
6.	4/94	30 days
7.	5/94	31 days
8.	6/94	30 days
9.	7/94	31 days
10.	8/94	31 days

From going through the documents it is clear that Gyanendra Singh was appointed as casual labour who worked 352 days from May 83 to Sept. 1984 thereafter he did not work. It is clear from the letter of DET Etawah letter dated 3-9-87 address to DMT, Lucknow informing him that worker Gyanendra Singh worked 352 days as casual labour and his date of birth of 29 January 55. DET, Etawah requested DMT, Lucknow that if DMT, Lucknow had any requirement of casual labour then DMT, Lucknow can consider on the application of Gyanendra Singh. Worker has not filed the application mentioned in the letter of DET, Etawah. Meaning that he had he filed the application it would have adversely effected his interest. Therefore this is concluded that the worker worked from May 1983 to Sept. 1984 only for 352 working days.

The worker has filed the photostat copy of the letter Asstt. Engineer Telecom, Lucknow which shows that Gyanendra Singh has worked from Sept. 87 to April 88 for 218 days in Lucknow.

There is another letter of July 1992 that purported to be signed by SDO the copy of which is paper No. 18 (Photostat Copy 13/20) shows that Gyanendra Singh worked in Telegraph office from Feb. 1989 to August 1989 as daily wage worker for 80 days.

It is thus clear that the worker Gyanendra Singh was out of employment from Oct. 1984 to August 1987. It can not be presumed that worker did not worked in the aforesaid period.

There is a letter of Gyanendra Singh address to SDO, Door Sanchar, Etawah dated 5-6-92 paper No. 3 which narrates that he worked from May 1983 to Dec. 1990 and due to leg injury he could not attend duty. Firstly he has not mentioned that sustained fracture secondly he alleges

himself that he worked from May 1983 to Dec. 1990. The first part belies his own statement he sustained fracture the second part is false. He has failed to establish that he worked continuously upto Dec. 1990. This is his own statement which is proved false by his own document mentioned above. He did not stop alleging falsely he again represented to SDO, Door Sanchar by his letter dated 29-9-93 that he continuously worked from 12-5-83 to 19th August 1989. For the first time on 29-9-93 he alleges that his right leg was fractured and therefore he could not work. He falsely alleges that he continuously worked from 1983 to 1999. On repeated representations Sri Nagendra Prasad, Asstt. Director, Telecommunication allowed Gyanendra Singh for engagement as daily wage worker for 4 months vide letter dated 4-11-93. This letter is paper No. 6 filed by the worker himself. The copy is endorsed to SDO Etawah requesting that within the 4 months of engagement the matter be reported to Sub Divisional Office about condonation of the break period. From the perusal of the letter it is clear that Nagendra Prasad, Asstt. Director was sent copy of application of the worker was also forwarded SDO was directed that the matter be reported for the guidance to Sub Divisional Office. In compliance of the said order the worker was taken on duty for 4 months. At the same time the worker was directed that he should give details of the break period alongwith his declaration.

It is therefore concluded that by false representation the worker was inducted to re-employment from 11-1993 to 8-1994. to therefore this period cannot be counted for computing 240 days of working.

Reference which is made to this court is whether the action of the District Manager, Deptt. of Telecommunication, Etawah in terminating the services of Sri Gyanendra Singh S/o Hardwari Lal with effect from 1-9-94 is legal and justified if not to what relief the concerned workman is entitled to ?

According to the Section 25 F of the I.D. Act, 1947 no workman employed in any industry which has been in continuous service for not less than one year under a employer shall be retrenched by that employer until the workman has been given one month notice, or has been paid retrenchment compensation.

Therefore in the above circumstances if the worker can prove that he worked 240 days of continuous service of the O.P. preceding the date of termination than only his termination will be termed as retrenchment. In the present case the issue points out that the termination dated 1-9-1994 therefore the worker has to prove that he has actually worked for 240 days.

From the evidence discussed above I come to the conclusion that the worker has not been able to prove that he continuously worked for 240 days in the proceeding year. Though the worker, on misrepresentation of the facts

obtained the service of casual labour from Nov. 1983. He has mis-represented that he has worked from 12-5-83 to 31-8-89. In some representation he states that he worked continuously from May 1983 to Dec. 1990 in some representations he stated that he worked continuously from 12-5-83 to 31-8-89 both are false. In the circumstances the testimony of worker can not be believed regarding injury in the right leg or fractured in leg with the result I come to the conclusion that the worker has not been able to prove that he was continuously worked from 1983 to 1994. In the above circumstances worker is not entitled for any relief.

10-9-2003

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2003

का० आ० 2969.—आौद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युक्त बैंक के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आौद्योगिक विवाद में आौद्योगिक अधिकरण, पटना के पंचाट [संदर्भ संख्या 8 (सी)/2003] को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-2003 को प्राप्त हुआ था।

[सं. एल-12011/190/2001-आई आर (बी-II)]
सी० गंगाधरण, अवर सचिव

New Delhi, the 19th September, 2003

S. O. 2969.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [Ref. No.8 (c)/2003] of the Industrial Tribunal, PATNA (BIHAR) as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 19-9-2003.

[No. L-12011/190/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

OFFICE OF THE PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL, PATNA

REFERENCE CASE NO. 8(C) OF 2003

Management of UCO Bank, Mauryalock Complex, A-Block, Patna and their workman Sri Ramesh Chandra Prasad, Peon represented by the State Secretary, UCO Bank Employees' Association, Exhibition Road, Patna.

For the Management : Mr. P.K. Chatterjee, A.C.O. of the UCO Bank.

For the Workman : Sri B. Prasad, State Secretary, UCO Bank Employees' Association, Exhibition Road, Patna.

Present : Sri Priya Saran, Presiding Officer, Industrial Tribunal, Patna.

AWARD

The 11th September, 2003

By adjudication order No. L/12011/190/2001-IR(B-II) dated 23-4-2002 the Government of India, Ministry of Labour, New Delhi has referred under clause (d) of sub-section (i) and sub-section (2-A) of section 10 of the Industrial Disputes Act, 1947 (hereinafter to be referred to as 'the Act'), the following Dispute between the management of UCO Bank and their workman Sri Ramesh Chandra Prasad, Peon for adjudication to this Tribunal :

"Whether the action of the management of UCO Bank Branch at Frazer Road, Patna in not regularising Shri Ramesh Chandra Prasad, Peon is justified? If not, what relief the workman is entitled to?"

2. Although notice was issued to the workman's Union for filing written statement of claim and State Secretary of the UCO Bank Employees Association appeared but he filed instead a petition on 26-8-2003 to pass a "No Dispute Award" in view of management's decision to permanently absorb the workman concerned Sri Ramesh Chandra Prasad, Peon in the subordinate cadre. The petition was moved with a request to pass such Award.

3. The management appeared and filed written statement on its behalf stating therein that the workman had been empaneled for permanent absorption in the Bank. After the settlement dated 12-10-89 an Industrial Dispute was raised by the Union whereunder Central Govt. Industrial Tribunal, No. 2, Dhanbad gave an Award for permanent absorption of the daily wagers. Hon'ble Calcutta High Court in W.P. No. 1390 of 98 also directed the Bank Authorities to consider and absorb the casual workers as and when concerned restriction are lifted by the R.B.I. The management has expressed his willingness to follow the Hon'ble Court's decision.

4. The State Secretary of the UCO Bank Employee's Association while moving his petition when filed submitted that good senses had now prevailed on the management and the worker has been decided for permanent absorption as peon and the dispute between the parties has ceased to exist.

5. It is well manifest in view of submissions placed before me by the State Secretary of UCO Bank Employee's Association that the grievance of the workman Sri Ramesh Chandra Prasad has been redressed by the management of UCO Bank and the same stands settled. In the circumstances aforesaid, it would be simply a futile exercise to go into the details of the claims and counter claims of the parties concerned and examine their veracity any more.

6. In the result, I hereby pass a "No Dispute Award", which appears to be just and consistent on account of settlement of the controversy between the rival parties.

7. Award accordingly.

Dictated & corrected by me

11-9-2003

PRIYA SARAN, Presiding Officer

नई दिल्ली, 19 सितम्बर, 2003

का० आ० 2970.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैं टेनमेंग, सेलम के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 63/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-03 को प्राप्त हुआ था।

[सं. एल-29011/98/2002-आई. आर (विविध)]

बी० एम० डेविड, अवर सचिव

New Delhi, the 19th September, 2003

S. O. 2970.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. No.63/2003 of the Central Government Industrial Tribunal, Chennai as shown in the Annexure, in the Industrial Dispute between the management of M/s. TANMAG, Salem, and their workman, which was received by the Central Government on 19-09-2003.

[No. L-29011/98/2002-IR(M)]

B.M. DAVID, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 10th September, 2003

Present : K. JAYARAMAN,

Presiding Officer,

INDUSTRIAL DISPUTE NO. 63/2003

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of TANMAG and their workman)

BETWEEN

The General Secretary,
Salem Distt. Magnesite
Labour Union,
Salem.

: I Party/Claimant

AND

The Managing Director, : II Party/Management
TANMAG, Salem

Appearance :

For the Claimant : None

For the Management : M. R. Raghavan,
Advocate

ORDER

The Central Government, Ministry of Labour vide Notification Order No. L-29011/98/2002-IR (M) dated 01-04-2003 has referred the following dispute to this Tribunal for adjudication :—

"Whether the action of the management of TANMAG in terminating the services of Shri Subramanian is justified ? If not, to what relief he is entitled ?"

2. The matter was taken up on the file of this Tribunal as I.D. No. 63/2003 and notices were issued to both sides. The II Party/Management alone entered appearance through an advocate. No Claim Statement was filed on behalf of the I Party/Claimant. There was no representation on the side of the I Party/Claimant, even after two notices. It appears that the Petitioner Union is not interested in pursuing the reference.

3. In view of the above circumstances, the present reference is returned to Ministry for want of prosecution. The Central Government is informed accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 10th September, 2003)

K. JAYARAMAN, Presiding Officer,

नई दिल्ली, 22 सितम्बर, 2003

का० आ० 2971.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/त्रिम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 125/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-03 को प्राप्त हुआ था।

[सं. एल.-12011/71/2001-आई. आर (बी-11)]

सी० गंगाधरण, अवर सचिव

New Delhi, the 22nd September, 2003

S. O. 2971.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the Award Ref. No. 125/2001 of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 19-09-2003.

[No. L-12011/71/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW

PRESENT

SHRIKANT SHUKLA : Presiding officer

I. D. NO. 135/2001

Ref. No. L-12011/71/2001-IR(B-II) dated 27-7-2001

BETWEEN

UNION BANK STAFF ASSOCIATION

SECRETARY, UB STAFF ASSON,

C/o UNION BANK OF INDIA

24/53, BIRHANA ROAD, KANPUR (U.P.)

AND

UNION BANK OF INDIA

ASSTT. GENERAL MANAGER,

UNION BANK OF INDIA, PANDU NAGAR,

KANPUR (U.P.)

AWARD

The Government of India, Ministry of Labour vide their order No. L-12011/71/2001-IR(B-II) dated 27-7-2001 has referred following issue for adjudication to this Tribunal.

“Whether the action of the Management of Union Bank of India in not allowing Shri Ravi Kumar Tandon, Senior Clerk/Typist, Sisamau Branch, to appear for the exam of Computer Operator on 14-3-1999 on the basis of seniority is legal and justified if not to what relief the concerned workman is entitled to ?”

Union Bank of India Staff Association's case is that as per policy of bank, for the filling of the post of Computer Operator a test was to be conducted by the bank. It is mandatory on the part of the bank to call of clerical staff on seniority basis, as per requirement of the Computer Operator at the station, who have

applied for the test. Sri Ravi Kumar Tandon who was eligible to appear in the test as per the station seniority submitted his application dated 22-2-99, which was well within Schedule date to the Branch Manager, Sisamau Branch, Kanpur, who was competent to receive the application for onward forwarding to the concerned authority. Inspite of having fulfilled all the requirement of the bank, he was not given any call letter to appear in the test which was held on 14-3-99. Due to which Ravi Kumar Tandon has been deprived of his legitimate claim to appear in the test and consequently the post of computer operator, which attracts special allowance of Rs. 410 per month from the date of posting.

O.P. has filed W.S. denying the claim of the association. The management of the Bank has stated that the name of Sri Ravi Kumar Tandon was inadvertently omitted as such he was not called for the test conducted by N.R.O. (Nodal Regional Office) Lucknow for the selection of computer operator. It was the duty to Mr. Tandon that in his own interest he could have approached office of either the Regional Office, Kanpur or the NRO, Lucknow to rectify the said inadvertent error but he for the reasons best known to him neither enquired about the test nor informed the concerned authority in advance though all call letters to other persons were issued much before the commencement of the test. It is well settled that person entrusted with duties attracting special allowance are entitled for so when he actual performed the work. In the present case Sri Ravi Kumar Tandon has not performed the duty attracting special allowance as such not entitled for the same. Therefore, the bank has requested the present reference is liable to be answered against the claimant union holding them not entitled to any relief.

The worker has filed rejoinder stating therein the fact is that during the process of aforesaid test the bank created total chaos/mismanagement for which it is to be held responsible. The test was scheduled for 14-3-99. On 5-3-99 the bank issued call letters, overlooking the seniority of various employees of the city. When the Union brought this blunder to the notice of the management, the call letters to eligible candidates could be issued upto the penultimate day of the test date. Inspite of such state of confusion created by the management, Mr. Tandon contacted the Branch Manager, Sisamau as well as Asst. General Manager, Regional Office, Kanpur about the non receipt of his call letter. He even sent a letter on 12-3-99 to NRO, Lucknow through Branch Manager, Sisamau to this effect. But no body took notice of his plight. Thus management favouring to Mr. R.C. Gupta junior to Mr. Ravi Kumar Tandon called for test on 14-3-99 held at Lucknow. It is violation of promotion policy and bip-settlement.

The worker filed affidavit on behalf of the Association. However, the worker remained absent on 27-3-2003, therefore it was believed that the workman does

not want to be cross examined and 24-4-2003 was fixed for the management evidence. The management did not file the affidavit on 24-4-2003. The worker and his association absent on 24-4-2003 and 25-06-2003 was fixed for evidence. On 25-6-2003 workman and association did not appear and therefore court ordered to proceed ex-parte against the workman. The management filed affidavit A2-25 in support of his defence.

Heard learned representative of the O.P.

It is not specifically denied that as per policy of the bank, for filling of the post of computer operator a test was conducted by the bank. It is also not denied that the clerical staff on seniority basis as per the requirement of the computer operator at the station have to be called for the test. It is also not denied by the O.P. that Sri Ravi Kumar Tandon was eligible to appear in the test as per the station seniority. It is also admitted that Sri Ravi Kumar Tandon applied to appear in the test on 22-2-99 and which was in the time and the Branch Manager, Sisamau branch forwarded his application to the concerned auoy. This is also admitted fact that inspite of receiving application the O.P. has not given any call letter to appear in test which was held on 14-3-1999.

O.P. only submission is that due to inadvertent error the name of Sri Ravi Kumar Tandon was omitted as such he was not called in test in NRO, Lucknow for selection of the computer operator. Arguments forwarded by the O.P. representative is that it was duty of Sri Ravi Kumar Tandon to bring this fact in the notice of Regional Manager, Kanpur or NRO, Lucknow and since the worker i.e. Ravi Kumar Tandon has neglected to communicate the officers named above, he can not get any relief from the court. I do not agree with the submissions of the O.P. It was duty of O.P. management to see to it that call letters are issued to all eligible candidates. Due to the blunder on the part of the authorities the worker could not appear in the test and consequently he was denied the opportunity to appear in the test and with the consequences that he has not been able to get the special allowance of Rs. 410/- per month. The management can not take the plea that workers should have enquired about the test from colleagues and should have contacted the authorities of the O.P. The action on the part of the O.P. is not legal or justified. With the result the issue referred to this court is decided in negative and in favour of the association.

Although Sri Ravi Kumar Tandon did not pass the test so he is not entitled to the special allowance. He has not worked on computer, therefore the O.P. can not pay the special allowance as prayed for, but at the same time the mangement has to compensate the workman by paying 1/2 of the special allowance per month till he appears required test. And if Sri Ravi Kumar Tandon passes the test, he

shall be placed on work on computer according to his seniority and shall be paid consequential benefits. Issue is answered accordingly.

Dated : 12-9-2003

LUCKNOW

SHRIKANT SHUKLA, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2003

का० आ० 2972.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ. सी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण मुम्बई नम्बर-1 के पंचाट (संदर्भ संख्या सी. जी. आई. टी.-30/1994) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-03 को प्राप्त हुआ था।

[सं. एल. 22012/425/93-आई. आर (सी-II)]

एन० पी० केशवन, डैस्क अधिकारी

New Delhi, the 22nd September, 2003

S. O. 2972.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-30/1994) of the Central Government Industrial Tribunal-cum-Labour Court-Mumbai No. 1 as shown in the Annexure, in the industrial dispute between the employers in relation to the management of FCI and their workmen, which was received by the Central Government on 19-09-2003.

[No. L-22012/425/93-IR(C-II)]

N.P. KESAVAN, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present : Shri Justice S.C. Pandey

Presiding Officer,

REFERENCE NO. CGIT 30/1994

Parties :

Employers in relation to the management of Food
Corporation of India

And

Their Workmen

Appearances :

For the Management : Mr. B.M. Masurkar,
Adv.

For the Workmen : Mr. M. B. Anchan,
Advocate.

State : Maharashtra

Mumbai, the 29th day of August, 2003

AWARD

1. This is a reference made by the Central Government, in exercise of its powers under clause 1 (d) of Sub-section 1 and 2 A of Section 10 of Industrial Disputes Act, 1947 (the Act for short) for resolving the industrial dispute between the Food Corporation of India (the Corporation for short) and the workmen named in the list employed by the Corporation. The terms of the dispute are being reproduced here. They are as follows :—

“Whether the management of FCI, Ajni, Nagpur, in awarding the contract work to M/s. Amravati Taluka Rly. Loading, Unloading, Transport Mazdoor Co-op. Sanstha Ltd., Amravati, against the prohibiting orders notified by the Ministry of Labour, dated 1-11-1990 and not treating the contract labour numbering 81 in total as their departmental labour so far, is justified ? If not, to what relief all the 81 workmen are entitled to ?”

2. The Food Corporation Workers Union (the Union for short) filed the Statement of claim on behalf of the workmen. It was alleged that Central Government issued a notification dated 01-11-1990 under Section 10 of Contract Labour (Regulation and Abolition) Act of 1970 prohibiting the employment of Contract labour in the food storage depots of the Corporation. One of such food storage depot was situated at Amravati. The Corporation did not enforce the agreement dated 12th April, 1991 with Union to introduce departmental system in depots at Amravati. It did so in respect of 77 depots. There was no agreement in respect of Amravati Depots. The employment of labour in food handling, loading and unloading was done by the Corporation through M/s. Amravati Taluka Railway Loading and Unloading Transport Mazdoor Sanstha, Amravati. It was alleged that despite prohibition to engage on the contract labour the Corporation illegally entered into contract with Sanstha. The Union tried to get the notification dated 01-11-1990 implemented so that the workmen be employed as departmental based labourers. It failed and thereafter raised an industrial dispute before Asstt. Labour Commissioner (Central) Nagpur. On failure of conciliation, the Central Govt. referred the dispute to this Tribunal. Thereafter, from 28-2-1994 the Corporation abolished the system under which the Labour Co-operative Society was supplying contract labour. It resorted to direct payment system as per terms and conditions given in paragraph 12 of the Statement of claim. It is alleged that the moment contract labour system was abolished, the workmen became the direct employees of the Corporation. The workers were entitled to benefits and the wages that were being given to departmental labourers. The continuance of Contract labour was illegal after issuance of notification. The Corporation was bound to treat the workman in question as departmental labour. The workmen were entitled to be given the same wages as they are being given as departmental labour from

1-11-1990. It was further alleged that even after 01-3-1994 the workmen were not being paid wages as was being given to their counterparts. The workmen at Amravati were entitled to same wages and was given to workers at Calcutta complex. It was stated that workers at Amravati were performing quantitatively and qualitatively the same work as was done at Calcutta complex. The employer was same and consequently, there could not be hostile discrimination between the workers employed by the same employer. It was claimed that the workmen be treated as departmental labour from 01-11-1990 and declare the contract given to Amravati Taluka Railway Loading and Unloading Transport Mazdoor Co-operative Sanstha Ltd. Amravati is illegal and unjustified. They should be given the same benefits and the same wage structure as was being given to workers of the Corporation at Calcutta with effect from 01-11-1990.

The Corporation in its written statement stated that (i) award of contract to Co-operative Society was not within the prohibition imposed by the notification because it was the Co-operative Society of workers. (ii) It was not case of employing contract labour. (iii) The workmen could not be said to be covered by definition of workmen under Section 2(s) of the Act as they were rank outsiders. It was stated that the contract of handling and transport is not a contract of services not contract for services. Apart from employing labour for handling road transport, the independent contractor rendered other services at different rates. There was no hiring of personnel. The workers were rendering service to the Contractor. It was submitted that the contract read as a whole would clarify the above assertion that the contract of handling and transport is not a contract of hiring labour. It was alleged that the former employees of erstwhile contractor after issuance of the notification on 01-11-1990 formed a co-operative society. They themselves executed a contract with the Corporation. It is stated that contract in effect was awarded to workers though the Co-operative Society was juridically a different person. It was not true that 81 persons were involved as workers but only 49 persons were employed. It is also submitted that there was no employer and employee relationship between the workmen and the Corporation. They could not raise the Industrial dispute. It stated that the case of the Union, there was no difference between a private contractor and a labour co-operative society was incorrect. It was alleged that departmentalizing of labour from 01-3-1994 did not mean that the stand of the Corporation was not right. The departmentalizing of Handling and Transport was done because the union persuaded the Hon'ble Food Minister the Direct Payment System on 23-2-1994. It was stated that as per M.O.U. agreed and signed on behalf of the union pursuant to which the direct payment system was adopted it was stated that the dispute became redundant. It was agreed in M.O.U. by the Union that the present dispute raised by the Union no longer existed.

The agreement dated 23-2-1994 is the agreement that governed the conditions of departmental labour.

4. The Union filed along rejoinder to the amended written Statement. The allegations made in the written statement were controverted in great details. It is, however, submitted that the Memorandum of Agreement dated 23-2-1994 did not end the dispute. It was not a full and final settlement. It was submitted that notification covered the contract of service and contract for service. All the three points raised by the Corporation regarding the interpretation of the notification were specifically denied. These are the only points which are relevant for the passing of the Award.

5. By order dated 8-4-1996 the then Presiding Officer of this Tribunal Justice Shri. R.S. Verma framed the following issues :

- (i) Whether the FCI, Ajni, Nagpur management acted legally in awarding contract to the Co-op. Sanstha mentioned in reference inspite of prohibitory order dated 1-11-90 mentioned in the reference? (Management)
- (ii) Whether the Sanstha aforesaid had engaged 81 labour mentioned in the list annexed to the reference and not 49 as claimed by the management at the Amravati Depot? (Union)
- (iii) To what relief are the workmen or such of them as are proved to have been engaged at the Amravati Depot, entitled?

6. The Issue No. 2 is question of fact relating to the number of workmen engaged as labourers by the Corporation at Amravati Depot for performing the function of handling and transport of goods of the Corporation. It appears from the list of workers attached to the order of reference that 61 persons were performing as regular workers and 20 workmen were working as ancillary workers. The total comes to 81 workers. This case was pleaded by the workmen. As against this in the written statement the Corporation pleaded that only 49 persons were working. The burden of proof of proving that the Corporation employed 81 persons was on the workmen. The parties led their respective oral and documentary evidence on this question. The Corporation filed the affidavit of G.D. Wankhede MW1 in lieu of examination in chief. He was cross examined. He stated that some time prior to 28-4-94 as census of the workmen working at Amravati Depot was taken before its closure. He claimed to be the sole member of the Committee for the depot and stated three members of the Union had joined the committee. It was found that 49 persons were employed and 17 ancillary labourers. There were two lists prepared. First list dated 28-4-1994 sent a record of $30 + 17 = 47$ labourers and another list of 10-5-94 identified two more labourers. Both these documents were the reports of the

Committee together with the list duly signed. In cross examination this witness admitted that as per M.O.U. the committee consisting of District Manager, Depot in charge and a representative of the Union was required to identify the labourers. He stated that three members of the Union were nominated. Another witness was MW2 Kannapuram. He also stated in his affidavit that 81 persons were not working. He too was cross examined on this point. He admitted that there was no notice displayed on the notice board for identification of workers on 28-4-1994. He explained that the Union had undertaken to produce the workers for identification. M.G. Pardkan was also examined. He too supported the case of the Corporation. He also supported the case of the Corporation. He too was cross examined. The union examined Hardivan Singh for proving its case. He stated in his affidavit that 81 persons were employed and he relied upon his documents. In cross examination he stated that he relied on his own document. He did not accept the documents filed by the Corporation. After considering the rival contentions and the oral and documentary evidence on record this tribunal comes to the conclusion that the Union has failed to establish that 81 persons were employed. It is true that the Union was claiming 81 persons were employed. A committee was formed. The committee could identify only 49 workers. That apart the relevant vouchers and E.P.F. filed by the Corporation related to relevant time show that 49 workers were employed. This tribunal finds that Corporations claim appear to be justified that only 49 persons were employed. The identity of these 49 persons is established by the documents which was filed along with the report of committee dated 28-4-94 (Exhibit A) and 10-5-94 (Exhibit B) attached to the affidavit of Mr. Wankhede. The Corporation has also filed the vouchers and the documents showing the deduction of E.P.F. from the wages of 49 workmen. In view of admission of Corporation, there can hardly be any dispute about the identity of 49 persons. The issue No. 2 is decided by saying only 49 persons were employed by the Co-operative society.

The issue No. 1 to 3 are interconnected. They have to be decided together. The question that is required to be asked is : What is the effect of issuance of notification dated 1-11-90 under the Act of 1970. It cannot be disputed that the Corporation continued to employ the workmen aforesaid between 1-11-90 to 28-2-94. The notification dated 1-11-90 Ex. M1 was issued under section 10(1) of the Act of 1970. It prohibited employment of contract labour. The item no. 56 of the notification related to Storage depot of Corporation at Amravati where it stores food. The notification inter alia related to aforesaid food storage depot banned employment of contract labour for carrying out the process, operation or work of handling of food grain including their loading and unloading from any means of transport, storing and stocking. It is not in dispute that

concerned workmen were performing handling operations in the aforesaid depot at Amravati. It is also not disputed that the Corporation had previously employed contract labours through a contractor. After abolition of contract labour as per notification dated 1-11-90, the Corporation evolved a system, which in its opinion could not be held contrary to the notification. In short it was a system of entering into agreement with a co-operative society of workmen namely M/s. Amravati Taluka Rly. Loading and Unloading Transport Mazdoor Sanstha Ltd., Amravati. The agreement and the documents relating to the agreement have been filed by the Corporation Document Exhibit M3 (page 13 to 45 of documents filed by the Corporation). The decision of the Steel Authority of India Ltd. vs. National Union Waterfront Workers 2001 Lab IC 3656 is a land mark judgement. It has conclusively laid down that by issuance of abolition of contract labour the workers employed by the contractor do not become the workers of the Principal Contractor. It over ruled its previous decisions prospectively. The Steel Authority of India vs. National Union Waterfront Workers (supra) clarified that it will apply to all those cases where the workmen finally absorbed pursuant to its earlier decision which was over ruled. In the case of ONGC vs. Petroleum Employees Union 2003 Lab IC 544 a Division Bench of High Court of Bombay held as follows at page 547 paragraph 9.

"Having considered this question at length, it is not possible for us to accept the submission of the learned Counsel for the Respondents. The language used by the Supreme Court in giving the aforesaid direction is unambiguous. Their Lordships have clearly stated that the absorption not be set aside in cases where the absorption has been implemented and has become final. In other words, it has been held that if contract labour has been absorbed in pursuance of a direction which has been given effect to and has also become final, such absorption shall not be set aside. In the present case, it is clear that though such a direction has been implemented pending the appeal, it has not become final. These appeals have been admitted against the judgement of the learned Single judge and obviously therefore the direction for absorption cannot be said to have become final. The interim orders of this Court initially directing the appellant to treat the Respondents, the contract labour as their direct employee with effect from the date of the judgement and any other interim orders cannot be construed as a direction which has become final and therefore, it is not possible to hold that the absorption, if any, is not liable to be set aside."

The above question taken from paragraph 9 of the order of Division Bench of the High Court Bombay, interpreting the direction of Supreme Court in the case of Steel Authority of India vs. National Union of Waterfront Workers (supra) shows that where the workmen are not finally absorbed pursuant to the earlier decision of

Supreme Court which was over ruled by the aforesaid case, then they shall not be able to claim right of absorption. If the workmen are not absorbed then the Supreme Court stated that the result would be as follows. In the Steel Authority of India Ltd. vs. National Union of Waterfront, it was stated in sub paragraphs 5 and 6 of paragraph 122 as follows at page 3696 and 3897 of the Report.

"(5) On issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder."

(6) If the contract is found to be genuine and prohibition notification under S. 10(1) of the CLRA Act in respect of the concerned establishment has been issued by the appropriate government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process operation or other work of the establishment the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition is to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

After issuance of notification the workmen doing the work of handling, loading, unloading and transporting of grains for the Food Corporation of India through an alleged Co-operative Society of workmen known as M/s. Amravati Taluka Railway Loading and Unloading Transport Mazdoor Co-operative Sanstha. In view of

above facts, this tribunal is bound to examine whether the aforesaid Sanstha has been interposed either on the ground having under taken (i) to produce any given result for the establishment or supply of contract labour for work of establishment under a genuine contract (ii) or it is mere use or camouflage to evade the compliance of various beneficial legislations to deprive the workmen of the benefit there under. It is definitely claimed by the Corporation that it has entered into genuine contract. It was pleaded that Sanstha was a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960. It is not in dispute that work of handling and transfer was done by the Corporation through a Contractor prior to issuance of notification. There is no explanation given by the Corporation regarding the fact how the Sanstha came into picture. There is no oral evidence lead to show in what circumstances the contract was given to Sanstha. There is nothing on record to suggest how the 49 workers formed the Sanstha. The witnesses examined by the Corporation are G.D. Wankhede, A. Kanna Puran, G. Y. Jalvi and M.G. Poradakar. None of these witnesses show how the contract with the Sanstha was entered into. No evidence was led to show how the Co-operative Society was constituted by the 49 workmen. The letter dated 2-6-94 of the Sanstha shows Prem Shankar Tiwari as President and Narayan Rao Deshmukh as Managing Director. Who were they? They could have been examined. Merely filing certain documents showing that Sanstha had obtained license under the Act, 1970. A copy of so called H4. T contract marked as exhibit M3 (at page 13 to 45) would not prove that Sanstha represented the workmen. The tender documents do bear the seal of Sanstha and they appear to be initialed by Managing Director at the end of each page. He has entered into contract. This person was not examined. It was argued that in the statement of claim, it was stated that M/s. Amravati Taluka Railway Loading and Unloading Transport Mazdoor Co-operative Sanstha Ltd., Amravati was a contractor and therefore, it was not necessary to prove the terms of contract. This tribunal had framed the Issue No. I placing the burden of proof upon the Corporation. Therefore, it was its duty to prove that the contract was genuine. Moreover, after the notification was issued, there was no reason to get the work of handling done through the Co-operative Society of workmen. It has been further pleaded that in fact the contract was not employing contract labour. It was argued that Contract entered with the Sanstha was a contract for rendering services. It was not hit by the notification. The notification Ex. M1 prohibits employment of contract labour in the Food Storage Depot of Corporations. It specifically mentions the Food Storage Depot of Amravati (item No. 56). It applies to the Food Storage Depot where *inter alia* handling of food grain including loading and unloading from any means of transport storing and stocking is done. Therefore, employing of contract labour was abolished. It

would not be correct to reject the claim of workmen on the ground they were not employed by the Corporation. In case while examining the genuineness of the employment of contract labour, if tribunal holds that workmen are employed by the Corporation itself and the agreement was shown or camouflage then the workmen shall be held to be the employees of the Corporation. This tribunal is of the view it is clear from the stand taken by the Corporation itself that at Amravati the departmental system was not introduced. There was nothing in the agreement dated 12-4-91 entered with the Union regarding Amravati Food Storage Depot. We do not know why this Depot was not brought under the departmental system. However, it cannot be argued on that basis that omission amounted to consent on the part of Union to enter into a contract as claimed on behalf of Corporation. There was no package deal in agreement dated 12-4-91. The Corporation has failed to prove that there was an agreement with the Co-operative Society to render service as demanded by the Corporation. For this purpose, it was necessary to prove that there was a Co-operative Society of workers. It should be Co-operative Society providing services as per Maharashtra Co-operative Society Act, 1960. If we do not know the nature of society, its rights and liabilities, we cannot say anything. Non examination of the person who signed the agreement and proving the actual contract raises a doubt on the genuineness of the mode adopted by the Corporation. The conclusion is that so called contract with Co-operative Society has not been proved to be genuine. It is a mere camouflage for depriving the workers of their wages. The so called Managing Director could have proved that the 49 workmen were the members of the Sanstha and it is created for their welfare. No outsider was the member of Co-operative Society. The aims and object of the Co-operative Society were to obtain the work and to obtain fair wages for the workmen. It appears to this tribunal that the officials of the Food Storage Depot of Amravati have created a camouflage by creating documents of agreements in order to escape the prohibition of notification. The argument that agreement is genuine is not accepted. Even the argument based on the assumption of genuineness of agreement with the Co-operative Society that the contract with the society was for rendering service rather than for supply of contract labour has to be rejected because it has not been held to be genuine. Even if it were genuine contract, the contention of the Corporation cannot be upheld on the basis of agreement. The Corporation was bound to lead evidence to show that the workers were the employees of the Co-operative Society and it was the Co-operative which employed them for the purpose of generating income to itself. It is very difficult to believe that the workers themselves shall form a Co-operative Society of which they become employees. This tribunal does not expect such sophistry on the part of illiterate workmen. No evidence was led to prove the contentions of the

Corporation. Merely filing contract documents was not enough. A number of factors have to be examined before it could be declared that workmen were not the employees of the Corporation. In the opinion of this tribunal the Corporation has clutched at a straw, by raising the argument that workmen were the employees of the Society and it appears that it is the last straw which has broken the back of the camel. In fact, this argument itself without anything more on record, points to the hollowness of claim of the Corporation. It strengthens the conclusion of tribunal the transactions discussed above were not genuine. The reality is that workmen were employed by the Corporation itself.

8. The next question is to what relief the workmen are entitled to. Once the contract entered into by the Corporation with the so called Co-operative Society has been found to be sham, bogus and a mere camouflage then these 49 workmen are entitled to wages as the employees of the Corporation. It is directed therefore, that the Corporation shall regularize the service of 49 workmen mentioned in Exhibit A dated 28-04-94 and Ex. B dated 10-5-94 attached to the affidavit of G.D. Wankhede as employees of the Corporation. The aforesaid direction shall become operative from 01-11-1990. The consequence would be that from date the workmen shall be entitled to get the same minimum wage as any other employee of same rank would get. However, it has been brought to the notice of this tribunal that from 01-3-1994 the Corporation had adopted the system of direct payment. Therefore, this tribunal directs that although the workmen shall be treated as the employees of the Corporation from 1-11-1990 they shall be paid for the period between 1-11-90 to 28-2-94 on the basis of direct payment system adopted on 1-3-1994. The Food Corporation shall pay difference of wages from 1-11-90 to 28-2-1994 as if the workmen were employed under direct payment system. This direction shall be applicable to 32 handling workers and 17 ancillary workers admitted to have been employed by the Corporation.

9. The next question arises that this tribunal has already held on the basis of judgment of Supreme Court in Steel Authority of India *Vs.* National Water Front Union Workers, that workmen have become employees of the Corporation w.e.f. 1-11-1990. However, it would suffice to direct that they shall get from 1-11-1990 to the date of passing this award on the basis of direct payment of system. This has been so held because of giving a direction to revised the wage structure from 1-11-90 to the date of passing of this award would cost undue burden on the Food Corporation of India. It would be sufficient to direct that in all other matters except wages the 49 persons shall be treated as employees of the Corporation. Their service conditions shall be governed by the Rules/Regulations of the Food Corporation of India from the

date of passing of this award these 49 persons as absorbed employees shall get the regular wages of an employee in accordance with their status at Amravati Depot.

The reference is answered in terms of the directions given in paragraph 9. No. costs.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 22 सितम्बर, 2003

का०आ० 2973.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय एम. सी. एल. प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर (संदर्भ संख्या 121/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-2003 को प्राप्त हुआ था।

[सं० एल- 22012/25/2000-आई. आर(सी-II)]

एन० पी० केशवन, डैस्क अधिकारी

New Delhi, the 22nd September, 2003

S.O. 2973.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 121/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MCL and their workman, which was received by the Central Government on 19-09-2003.

[No. L-22012/25/2000-IR(C-II)]

N. P. KESAVAN, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR
PRESENT:

Shri S. K. Dhal, OSJS, (Sr. Branch),
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 12/2000

Date of conclusion of hearing—28th August 2003

Date of Passing Award—3rd September, 2003

BETWEEN:

The Management of the
Project Officer, Lingaraj OCP of
MCL, At/Po. Deulbera Colliery,
Dist. Angul, Orissa.

... 1st Party-
Management

(And)

Their Workmen represented
through the General Secretary,
Mahanadi Coal Fields Mazdoor
Sabha, At/Po. South Balandia,
Dist. Angul, Orissa.

... 2nd Party-Union.

Appearances :

Shri M. P. Mishra, Senior Personnel Manager.	... For the 1st Party-Management
Shri Biranchinarayan pani.	... For the 2nd Party-Union.

AWARD

The Government of India in the Ministry of Labour in exercise of powers conferred by Clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. L-22012/25/2000/IR (CM-II), dated 31-07-2000/08-08-2000.

“Whether the Union is competent to raise industrial dispute for 13 workmen involved in the dispute ? If yes whether the action of the Management of Lingaraj OCP in reverting 13 Dumper Operators from Grade-II to Grade-III is justified ? If not, to what relief the workmen are entitled ?

2. The 13 workmen are the disputants who have been represented through their Union. The case of the 2nd Party is very straight and simple. Initially, they were appointed as Dumper Operator (Trainee) in Cat. I. Thereafter they were promoted to the post of Dumper Operator, Cat. V. Again they were promoted to the post of Dumper Operator, Cat. C on the recommendation of the Departmental Promotion Committee and the order of the promotion were communicated to them under letter No. 3488, dated 22/24-8-1998 of Deputy personnel Manager. But surprisingly the said promotion order was cancelled by the 1st Party-Management under Order No. 519, dated 16-2-1999. So, the disputants were reverted to the Post of Dumper Operator Gr. D below the rank of Gr. C. According to the 2nd Party the cancellation of the promotion order without calling for show cause and without any cause is illegal and arbitrary. So, they raised a dispute. After failure of conciliation the present reference has been made. In their Claim Statement, the 2nd Party has prayed to declare that the action of the 1st party-Management reverting the 13 disputants from Grade-II to Grade-III is unjustified.

3. The 1st party-Management has filed their Written Statement. In the Written Statement filed by the 1st Party-Management it has been pleaded that, the 13 disputants after completion of training were promoted to the Post of Dumper Operator Cat. V, which is the lowest post. Thereafter they were promoted to the Group-C on the recommendation of the Departmental Promotion Committee. But subsequently, it was found that, inspite of giving promotion to the post of Cat. D they were given promotion directly to Cat. C ignoring the stage of Cat. D. So, the promotion orders were cancelled and subsequently when they were eligible they were promoted to the post of

Cat. C. Their further pleading is that the question of giving notice to the disputants before cancellation of the promotion order does not arise as it was a mistake of the 1st party-Management and the disputants were not entitled at all to get promotion to a higher post ignoring the middle scale i.e. in the scale of Group-D.

4. On the above pleading of the parties the following Issues have been settled.

ISSUES

1. Whether the Union is competent to raise Industrial Dispute for 13 workmen involved in this case ?
2. Whether the action of the management in reverting the above 13 Dumper Operators from Grade-II to Grade-III is justified ?
3. If not, to what relief the workmen are entitled ?

5. On behalf of the 2nd Party one witness has been examined and about 35 documents have been exhibited. Similarly, the 1st Party-Management has examined one witness and has exhibited 7 documents, which has been marked as Ext.- A to Ext.-F in support of their stand.

FINDINGS**ISSUE NO. I**

6. This Issue has not been pressed. So, no answer is necessary in respect of this Issue. In other words, the Union is competent to raise a dispute.

ISSUE NO. II

7. The following facts are admitted by both the parties.

- (i) The disputants were promoted to the Post of Group-C on the recommendation of the Departmental Promotion Committee.
- (ii) That subsequently, the above promotion order was cancelled.
- (iii) Admittedly, a person is to get promotion to the Post of Group-D from Group-C.
- (iv) That no notice has been issued to the disputants to show cause before cancellation of the promotion order.
- (v) That, the matter was not referred to the Departmental Promotion Committee to review the recommendation wherein the disputants were given promotion to the post of Group-C.

8. On the above back ground it is submitted on behalf of the 2nd Party that, once the promotion was given on the recommendation of a Departmental Promotion Committee, if any change or reversion or cancellation is necessary, the same Departmental Promotion Committee is only competent to do it but not the 1st Party-Management. It is submitted that, even if it is accepted for

the argument sake that the order of promotion was a mistake in absence of some materials the same Departmental Promotion Committee should have been formed and the materials should have been placed before them for reconsideration of withdrawal of promotion but without doing that, the 1st Party-Management arbitrarily cancelled the promotion order who is not competent to give promotion. It has been further pleaded that, even in case of a mistake they are entitled for notice before cancellation of a promotion order.

9. On the other hand, it is submitted on behalf of the 1st Party-Management that, the Departmental Promotion Committee is a body for recommendation to give promotion, but does not have the power to give promotion or cancellation. It is left with the 1st Party-Management. In the present case no doubt the promotion was given on the recommendation of the Departmental Promotion Committee. But some materials could not be placed before the Departmental Promotion Committee, which led to them to give promotion directly to the Post of Group-C instead of Group-D. When this fact was noticed the authority cancelled the promotion order. According to the 1st Party-Management there is no necessity to refer the matter to the Departmental Promotion Committee. As regards show cause it is submitted that, no fruitful result could have been achieved if a notice to show cause were issued to the workman because practically they had nothing to show cause. The promotion was given by mistake.

10. After hearing both the parties, I am not inclined to accept the submission made on behalf of the 1st Party-Management. Admittedly, the disputants were promoted to the rank of Group-C on the recommendation of the Departmental Promotion Committee. If there was any mistake or there was suppression of materials those could have placed the same Departmental Promotion Committee to reconsider or to review their recommendation, but in this case it has not been done. The promotion given on the recommendation of a Departmental Promotion Committee can not be withdrawn or cancelled by an officer of the 1st Party-Management. Besides even if it is accepted for the argument sake that it is not necessary to refer the matter to the Departmental Promotion committee a notice to show cause is necessary when an adverse view was taken against the workmen. I am not inclined to accept the submission made on behalf of the 1st Party-Management that a notice is not necessary as the reversion was not a punishment. When any action is proposed to be taken against the workmen where some loss is going to be caused a notice is necessary. If the notice is not issued the action of the 1st Party-Management is treated as arbitrary. In this case, the promotion order has been cancelled without referring the matter to the Departmental Promotion Committee and no notice was issued to the disputants. So, I agree with the submission made on behalf of the 2nd Party that the action of the 1st Party-Management

reverting the 13 disputants from Grade-II to Grade-III i.e. from Cat. C to Cat. D is unjustified.

ISSUE NO. III

11. In view of my findings given in respect of Issue No. II the disputants are deemed to have concerned in the promotional post. When already they have been promoted to the post of Group-C they are entitled to get their financial benefits, which they were getting on the promotional post during the period of reversion with continuity of service.

12. Reference is answered accordingly.

Dictated & Corrected by me.

S.K. DHAL, Presiding Officer

BEFORE THE C.G.I.T.-CUM-LABOUR COURT: BHUBANESWAR

LD. Case No. 12/2000

List of the Witnesses Examined on behalf of the 2nd Party-Workmen

W.W. 1. Shri Prakash Chandra Pradhan

List of the Witnesses Examined on behalf of the 1st Party-Management.

M.W. 1. Shri K. Ramachandra Raju.

List of Documents exhibited on behalf of the 2nd Party-Workmen.

- Ext-1. Copy of the application dated 1-12-1999 of 13 persons.
- Ext-2. Copy of the affidavit dated 12-12-2000 of 13 persons.
- Ext-3. Copy of the Office Order No. 346, dated 12-7-1997 of Sr. Personnel Manager, Lingaraj OCP.
- Ext-4. Copy of the Office Order No. 3488 dated 22/24-8-1998 of Dy. Personnel Manager, Lingaraj OCP.
- Ext-5. Copy of the Office Order No. 1743, dated 30-4-1998 of Dy. Personnel Manager, Lingaraj OCP.
- Ext-6. Copy of the Office Order No. 519, dated 6-2-1999 of Dy. Personnel Manager, Lingaraj OCP.
- Ext-7. Copy of the Pay slips for June, 1999.
- Ext-8. Copy of the Pay slips for July, 1999.
- Ext-9. Copy of the Office Order No. 815, dated 1-3-1999 of Dy. Personnel Manager, Lingaraj OCP.
- Ext-10. Copy of the Letter No. 744, dated 9-12-1995 of General Manager (IR) Sambalpur.
- Ext-11. Copy of the Circular No. 1, dated 2-1-1978 of General Manager (Personnel).

Ext-12. Copy of the Office Order No. 6374, dated 3-6-1991 of P.O., Balandia Colliery.

Ext-13. Copy of the Office Order No. 10411, dated 24-8-1992 of ACME, Balandia Colliery.

Ext-14. Copy of the Office Order dated 9-12-1993 of P.O. Balandia Colliery.

Ext-15. Copy of the Office Order No. 12590, dated 3-10-1994 of P.O. Balandia Colliery.

Ext-16. Copy of the Office Order No. 8820, dated 25-8-1991 of P.O. Ananta OCP.

Ext-17. Copy of the Office Order No. 24052, dated 10-11-1992 of DCME, Ananta OCP.

Ext-18. Copy of the Office Order No. 9411, dated 3-5-1994 of Sr. Manager, Ananta OCP.

Ext-19. Copy of the Office Order No. 2081, dated 7-3-1995 of SPO Ananta OCP.

Ext-20. Copy of the office order No. 47053, dated 6-11-1986 of GM(T) Talacher.

Ext-21. Copy of the Office Order No. 9552, dated 11/12-6-1998 of Dy. Personnel Manager, Bharatpur Colliery.

Ext-22. Copy of the Office Order No. 10364, dated 9-6-1990 of Personnel Manager, Bharatpur Colliery.

Ext-23. Copy of the Office Order No. 5474, dated 1-4-1996 of Dy. Personnel Manager, Bharatpur Colliery.

Ext-24. Copy of the Office Order No. 9897-914, dated 5-7-1984 of P.O., Jagannath Colliery.

Ext-25. Copy of the Office Order No. 2068, dated 21-2-1987 of P.O., Jagannath Colliery.

Ext-26. Copy of the application, dated 10-8-2001 of 13 employees of Lingaraj OCP.

Ext-27. Copy of the application, dated 18-10-2000 of 18 persons of Lingaraj OCP.

Ext-28. Copy of the office order No. 1056, dated 18-2-2000 of SOM/Manager, Ananta OCP.

Ext-29. Copy of Authorization slips to operate dumpers.

Ext-30. Copy of daily production reports from Sept. 1996 to 6-3-2002 of Shri Prakash Chandra Pradhan (34 Pages).

Ext-31. Copy of letter No. 1004, dated 9-1-1996 addressed to Shri Rabi Narayan Sahu.

Ext-32. Copy of letter No. 31471, dated 25-7-1989/ 13-9-1989 addressed to Shri Kishore Chandra Sahu.

Ext-33. Copy of the Office Order No. 142, dated 21/22-2-1997.

Ext-34. Copy of the Office Order No. 2979, dated 31-5-2000.

Ext-35. Copy of the Office Order No. 6266, dated 30-9-2000.

List of Documents exhibited on behalf of the 1st Party-Management.

Ext-A. Copy of the Appointment letter No. CGM-JA. Rect. 95-1004, dated 9-1-1996 issued to Shri Rabi Narayan Sahu.

Ext-B. Copy of the Office Order, dated 22/24-8-1998 No. 3488 giving promotion to the 22 persons including 13 disputants.

Ext-B/1. Signature of Shri K. Ramachandra Raju, Dy. Personnel Manager, Lingaraj OCP.

Ext-C. Copy of the Office Order No. 519, dated 16-2-1999 canceling the promotion order of 13 disputants.

Ext-D. Copy of the Circular dated 9-12-1995 regarding career growth and training skill for Dumper Operator and Excavation category.

Ext-E. Copy of appointment letter of Rabi Narayan Sahoo.

Ext-F. Note Sheet (original) wherein approval was made for cancellation of the promotions of the 13 disputants.

नई दिल्ली, 22 सितम्बर, 2003

का०आ० 2974.— औद्योगिक विवाद अधिनियम, 1947

(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्टर फॉर डेवलेपमेंट ऑफ ग्लास इण्डस्ट्री के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 207/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2003 को प्राप्त हुआ था।

[सं० एल-42012/176/2000-आई.आर(विविध)]

बी० एम० डेविड, अवर सचिव

New Delhi, the 22nd September, 2003

S. O. 2974.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 207/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the Employer in relation to the Management of Centre for Development of Glass Industry and their workman, which was received by the Central Government on 22-9-2003.

[No. L-42012/176/2000-IR(DU)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
LUCKNOW

PRESENT

SHRIKANT SHUKLA,
PRESIDING OFFICER

I. D. NO. 207/2000

Ref. No. L-42012/176//2000-IR(DU)
Dated, 30-10-2000

BETWEEN

Sh. Raghvendra Prakash Dewedi,
S/o Sh. Ramanand Dewedi, 286/5
Mahabir Nagar, Ferozabad, 283203.

AND

Principal Director
Centre for Development of Glass Industry,
A-1/1, Industrial Area, Jaleshwar Road,
Ferozabad-283203

AWARD

The Government of India, Ministry of Labour vide their order No. L-42012/176/2000 (IR(DU) dated 30-10-2000 has referred following issue for adjudication to this Tribunal.

“Whether the action of the management of Principal Director, Centre for Development of Glass Industry, Firozabad in terminating the services of Sh. Raghvendra Prakash Dewedi w.e.f. 28-8-99 is legal and justified ? If not, to what relief the workman is entitled ??”

The workman Shri Raghvendra Prakash Dewedi's case in brief is that he was appointed on permanent sanctioned post of Technical Assistant w.e.f. 4-12-1998 without any appointment letter on a salary of Rs. 3900/- per month though the scale of the aforesaid post was Rs. 4500-7000. The Senior Glass Technologist did not like the appointment of the worker in the industry and he victimised the worker mentally, physically and economically. He did not pay his salary for the month of July, 1999 and he orally asked the worker not to come from the next day in the evening of 28th August, 1999. The salary for July and August, 1999 was paid much after. The worker has therefore, stated in para 3 of the statement of Claim that he continuously worked from 4-12-98 to 28-8-99 and further states that termination of his service after the closing of 28th August, 1999 falls within the definition of retrenchment

as given under Section 2 (oo) of the Act. It is further stated that the employer did not give any notice containing the reasons for retrenchment nor one month's pay in lieu of the said notice nor retrenchment compensation was paid nor the notice in the prescribed manner was sent to the Appropriate Government. The workman met the employer on the next day about his termination and requested him to reinstate him on duty, but he did not accede to the legal, just and proper demand. The worker has also alleged that the establishment of Centre for Development of Glass Industry, Firozabad is a registered society under provisions of Societies Registration Act, 1860 and is under the control of Ministry of Industry Govt. of India. It is doing business, trade and research and as such is an industry within the meaning of Section 2(j) of the Act. The employer was served with the notice of demand through Sh. H. S. Goyal, Advocate, Agra, but the same was not replied by the employer, but by his sub-ordinate, the Section Officer. The reply contained false and concocted version. The workman has further stated that the Glass Technologist Sh. S. Paul gave a certificate of working clearly mentioning the period of his working in the aforesaid establishment. Under the aforesaid circumstances, the workman is entitled to be reinstated with continuity of service and full back wages as the workman could not secure any alternative employment.

The opposite party has filed the written statement and denied the claim of the worker. The opposite party has denied that the worker was appointed on a permanent and sanctioned post of Technological Assistant in the Centre for the Development of Glass Industry, Firozabad. Further, it has been stated by the opposite party that to meet out the temporary requirements during the installation of the Product Technology Developed Unit of the Centre, the services of the claimant were taken purely as a casual worker only for a short duration i.e.w.e.f. 4-12-98 to 30-6-99 on daily wages of Rs. 150/- per day and the wages have been paid to the worker calculating on the basis of the actual days he worked with the CDGI by multiplying the number of days with Rs. 150/- At the time of making payment to the casual worker a proper receipt is being obtained. In the worker's case also, the CDGI obtained receipts of payments on casual workers payment sheet duly signed by the claimant. With regard to the allegations made against Shri Devendra Shah, Senior Glass Technologist is totally false and baseless. The opposite party has stated that no victimisation of the claimant has been made as stated by the worker. The opposite party has stated that since the worker did not work in the month of July and August, 1999 and therefore, the question of making payment for the months of July and August, 1999 did not arise at all in view of the fact that he had not worked with the CDGI after 30th June, 1999. In fact, as stated above, the claimant had not completed 240 days continuous service, as such, the question of payment of any retrenchment compensation

as provided under section 2 (oo) of the Industrial Disputes Act, 1947 does not arise at all and no notice is required for stoppage of work in case of a casual worker. In fact on the evening of 30th June, 1999, the claimant was told that there exists no work for the next day as the work of the project was over by that time for which he was engaged. so far as the allegation of the worker about the business, trade and research of the opposite party is concerned, the opposite party has stated that the CDGI has been set up for the purposes of assisting small scale glass industry for their technological up-gradation. No commercial business or business running motive is being carried out by the CDGI. Moreover, there is no activity which falls within the categories as defined under section 2 (z) of the Industrial Disputes Act, 1947 and CDGI is not an industry within the meaning of said Act. So far as the notice of advocate, Shri H.S. Goyel is concerned the opposite party has stated that it has been duly answered by CDGI under the signature of Section Officer in his official capacity. Regarding the certificate of working of Shri Subhankar Paul, Glass Technologist the opposite party, has stated it is forged. Accordingly, the workman's claim be rejected.

In the rejoinder the workman has denied the allegation of the management and has stated that he worked upto 28-8-99 and has brought new facts about the advertisement and has stated that five posts of Technical Assistants were advertised in Dainik Jagran dated 25-2-96 and the employer did not mentioned in that advertisement that the posts were temporary. The worker has also stated that he worked for 268 days and nothing new has been stated in the rejoinder.

The workman has filed following documents in support of his case :

1. Photo Copy of certificate by Shri S. Paul, paper No. 1/6.
2. Photo copy of requisition of the work in PTDU, paper No. 1/7.
3. Photo copy of advertisement purported to be of Dainik Jagran dated 25-2-96, paper No. 3/9.
4. Photo copy of Recruitment Rules for CDGI, Firozabad, paper No. 3/10.
5. Photo copy of letter of some person Pavel Thomas, addressed to R.N. Bhargave, paper No. 3/11.
6. Photo copy of work plan for czech team (25-1-99 to 30-1-99), paper No. 3/12.
7. Photo copy of application of the worker, paper No. 3/13.
8. Photo copy of Challan Book, paper No. 3/14.
9. Illegible copy of CDGI of the top of which Shri R.P. Dewedi is written, paper No. 3/16.

10. Photo copy of activity of R.P. Dewedi, paper No.3/17, 3/18 & 3/19.
11. Photo copy of out going slip dated 7-8-99, paper No. 3/20.
12. Photo copy of indent slip, No. 3/21.
13. Photo copy of PTDU final production report, paper No, 3/22, 3/23 & 3/24.
14. Affidavit of worker, paper No. 3&11.

The opposite party has filed photo copies of following documents:

1. Photo copy of casual worker's payment sheet, for the month of June, 99, May, 99, April, 99, March, 99, February, 99, January, 99 and December, 98, paper No. 4/10 to 4/16.
2. Photo copy of letter of Ram Dulare, Section Officer, addressed to Shri Hari Shankar Goyal, paper No. 4/17.
3. Photo copy of affidavit of Subhankar Paul, paper No. 4/18.
4. Affidavit of Sh. R.N. Bhargava, paper No. 5/2.
5. Affidavit of Devendra Shah, paper No. 6/2 to 6/13.
6. Photo copy of note sheet, paper No. 6/14 to 6/16.
7. Photo copy of experience certificate of Raghvendra Prakash Dewedi dated 27-2-96, paper No. 6/17.
8. Photo copy of contingent sheets dated 26-8-99 & 30-8-99, paper No. 6/18 to 6/20.
9. Affidavit of Devendra Shah, paper No. 7/2 to 7/9.
10. Counter affidavit of Ram Dulare, paper No. 12/2 to 12/5.
11. Affidavit of Ram Dulare, paper No. A2-66.
12. Affidavit of Subhankar Paul, paper No. A2-67.
13. Affidavit of Ram Dulare, paper No. A2-73.

The management moved an amendment application, paper No. 15, specifically stating that worker was engaged for a specific period for three months for project commissioning i.e. acid polishing plant in PTDU on a daily wages of Rs. 150/- per day. Since the project could not be completed within the period due to unforeseen problems, therefore, his period of employment was extended upto 30-6-99, which automatically ceased due to expiry of period as well as completion of the job. Shri Dewedi did not complete the service of twelve calendar months continuously as laid down in Section 25 (b) of the Industrial Disputes Act.

It is pertinent to mention that this application was rejected by the Presiding Officer on 20-12-2002.

Heard learned representatives of the parties and perused the evidence on record.

First of all it is to be decided that the opposite party is an industry as alleged by the worker or not.

The worker in para 7 of the statement of claim has alleged that establishment of Centre for Development of Glass Industry, Firozabad is a registered society under provisions of Societies Registration Act, 1860. This fact is admitted by the opposite party in para 1 of the written statement but the opposite party has stated that it is a society registered under the Societies Registration Act, 1860 and is a joint venture of Central Government, State Government and United Nation Development Programme/ United Nation Industrial Development Organisation.

The main aims and objects of the said CDGI is that it shall primarily assist in the technological upgrading and Development of Small scale enterprises for the manufacture of glass wares, processing its raw materials through introducing the modern production technologies and apply precision equipments as well as providing training and service facilities for such industries and improving the skill and knowledge of the staff of the centre as well as industries by way of imparting technical and managerial training. For the purpose of achieving the aims and objects of the society, the said society, time to time used to develop the project work.

The worker has alleged that the opposite party is no doubt is indulged in business, trade and research and as such is an industry. However, the opposite party has denied this allegation and has stated that no commercial business or business running motive is being carried out by the CDGI and there is no activity which falls within the categories as defined under Section 2 (z) of the Industrial Disputes Act, 1947 and the said CDGI is not an industry within the meaning of the said Act.

In the rejoinder, paper No. 2, para 7 the worker has stated that he is filing documents that the employers dispose of products to its customers. But not a single document has been enclosed with the rejoinder.

Shri Devendra Shah has stated in his affidavit, paper No. 6/11 that the Centre for the Development of Glass Industry has been set up for the purpose of assisting small scale glass industries for their technological upgradation. No commercial business or profit earning motive is being carried out by the centre. Moreover, there is no activity which falls within the categories as defined under section 2 (j) of the Industrial Disputes Act, 1947 and the said CDGI is not an 'Industry' within the meaning of the said Act.

There is no evidence to the effect that the CDGI at any point of time sold its products, technology or its research work to any one.

The workman has argued that even if it is research institute then also it is covered under definition of industry because if an institution is established to carry out research work with respect to its members with a view to secure greater efficiency, rationalisation and reduction of cost then it would be held to be an 'industry', held in Abmedabad Textile Industry's Research Association Vs. State of Bombay.

In the present case it is not proved that the opposite party is profit making body even then it is an industry. The issue is, therefore, decided in favour of the workman.

Now the question come for adjudication whether the workman has worked since 4-12-98 to 28-8-99 because according to the workman he was terminated from service after the closing of 28-8-99 and thus, he worked for 268 days.

The management's case is that the worker worked from 4-12-98 to 30-6-99.

On the basis of the allegations by the parties they have led the evidence and therefore, their evidences deserves to be scrutinized.

The opposite party has filed the experience certificate of the worker *i.e.* paper No. 6/12. This certificate pertains to Goverdhan Glass Industries. According to this Raghvendra Prakash Dewedi S/o Sh. Ramanand Dubey, R/o 286/5, Mahavir Nagar, Firozabad worked from October, 87 to October 93 as Supervisor. This certificate is dated 27-2-96.

According to the opposite party the workman is in habit of obtaining false and concocted certificates from various parties and individuals from very beginning. The worker in response to advertisement dated 25-2-96 wherein the experience of 6 years was sought for the post of Technical Assistant, the worker submitted an experience certificate given by M/s. Goverdhan Glass Industries wherein it was certified that Shri Raghvendra Prakash Dewedi was Supervisor in their factory during the period October, 87 to October, 93 showing the experience of 6 years whereas the date of birth as mentioned in the High School Certificate is 26-7-75 and from the Bio-Data given by the claimant he did his High School in 1989. Intermediate in 1991, B. Sc. in 1994 and M. Sc. In the year 1996. From the Bio-data, it is not believable that how the worker in the age of 12 year was engaged and did the supervision work in a Glass Industry and that too simultaneously with his studies. This shows that the worker has submitted the false and fictitious certificate along with his application. The photo copy of the certificate dated 27-7-96, which is filed along with the application clearly shows that the worker has couped a false story.

The worker in his cross-examination has stated that he worked as supervisor in Goverdhan Glass Industries from 1988 to 1993. He has also admitted that his date of birth is 26-7-75. Even if his statement on oath is taken to be

true, the age of the worker in 1988 shall be 13 years and age in 1993 will be 18 years. Judicial notice could be taken to the fact even in 1988 a minor could not work in any factory much less in glass factory. It could not be a true certificate and the contention of the opposite party is strong enough. It is pointed out that the worker on the previous day i.e. 5-6-2002 has stated that he was working since 1987 in glass industry. It is relevant to observe that according to the worker himself, in the advertisement 5-6 years experience in glass industry was required and he send his experience certificate. He has admitted that the said certificate was given by him to the opposite party.

The worker has tried to say that he was appointed on permanent and sanctioned post of Technical Assistant w.e.f. 4-12-98 without appointment letter on a salary of Rs. 3500/- per month but in cross-examination he admits that he was paid Rs. 150/- per day and accordingly he was paid. The worker was questioned as to how many days he worked from January to June, 1999 but he evaded the reply and said that he was regularly working. The worker admits that he was being paid every month on payment sheet and he was to signature the receipt. He also admitted that the amount in every month used to be different. Therefore, it proves that his statement in the statement of claim that he was appointed on salary of Rs. 3500/- per month is false. On the contrary the management alleged that worker was a daily wager, worked from 4-12-98 to 30-6-99 at the rate of Rs. 150/- per day. For example, in the month of March, 1999, the worker worked for 25 days and wages paid to him was Rs. 3750/- . Similarly, in the month of April, 1999 he worked for 23½ days for which a payment of Rs. 3525/- was made to him. In the month of May, 1999, the worker had worked only for a period of 15 days for which a sum of Rs. 2250/- had been paid to him. In the month of June, 1999, the worker had worked only for 26 days for which a sum of Rs. 3900/- was paid to him. The worker was asked as to how he was appointed, whether through appointed letter or through note sheet? The worker replied that he was shown the note sheet and he signed on 4-12-98.

To support their case the opposite party has filed casual labour payment sheet, paper No. 4/10 to 4/16. The opposite party has filed the note sheet dated 4-12-98, which shows that the worker was appointed on casual basis for a period of 3 months and there is another note sheet dated 3-3-99, which shows that the tenure of the worker was further extended up to 30-6-99. The said copy of note sheet has been proved by Devendra Shah by affidavit. But Devendra Shah has not cross-examined on the said note sheet. Devendra Shah has stated in affidavit that so far as advertisement date 25-2-96 is concerned, it is relevant to point out here that the applications received under the said advertisement were not processed due to administrative reasons. He has further stated that worker was engaged initially for a period of 3 months w.e.f. 4-12-98 and thereafter his period of engagement was further

extended upto 30-6-99. He has proved this by his annexure 1 & 2 to his affidavit.

Another witness Ram Dulare, the section officer of CDGI has filed his affidavit, A2-73 and he has proved that on request of Senior Glass Technologist, one person was required for the commissioning of acid polishing plant in PTDU. As such, he (Ram Dulare) as per procedure and practice made a proposal note dated 2-12-98 to engage a person on casual basis as skilled nature job on daily wage @ Rs. 150/- per day to the then Principal Director for his approval. The then Principal Director Shri R. N. Bhargava approved the aforesaid proposal. The note in this regard is annexed with the affidavit of Shri Devendra Shah as Annexure No. 1(A) which bears Ram Dulare's signature as proposal writer and signature of Shri R. N. Bhargava as approving authority. After obtaining the approval Shri Raghvendra Prakash Dewedi was engaged for a period of three months or shorter period. For the above a separate proposal dated 4-12-98 was prepared and put up before Shri R. N. Bhargava, the then Principal Director for engagement of Shri Raghvendra Prakash Dewedi on casual basis for a period of three months or shorter period. This proposal note is annexed as annexure No. 1(B) to the affidavit of Shri Devendra Shah. The original of which was also produced before this Tribunal on 20-12-2002 with deponent's affidavit dated 8-1-2003. This note bears Ram Dulare's signature as proposal writer and also contains the signature of the then principal Director, Shri Bhargava as approving authority and in pursuance of the reof, Raghvendra Prakash Dewedi was engaged. Shri Ram Dulare has also stated that since the commissioning of the Acid Polishing Plant could not be completed in time, a proposal note on a separate sheet was made by him on 3-3-99 for extension of the period of the engagement of Shri Dewedi for a further period upto 30-6-99, which is annexed as annexure No. 2 to the affidavit of Devendra Shah. The said Ram Dulare proved the note sheet. Shri Ram Dulare was cross-examined by the worker. Ram Dulare has not been cross-examined on his statement or note sheet. Therefore, it is proved that the worker was engaged from 4-12-98 to 30-6-99.

The worker has tried to prove that he worked for 268 days and has tried to prove that the salary for the month of July, 99 & August, 99 were not paid by the opposite party though he worked. To prove his case the worker tried to take help of certificate issued by Subhankar Paul. The photo copy of which is paper No. 1/6 dated 2-9-99. This certificate is purported to be signed by Glass Technologist, S. Paul. This certificate says that the worker worked as technical Assistant from 4-12-98 to 28-8-99. The worker has to prove that Shri Subhankar Paul was authorised to issue such certificate. Shri Subhankar Paul has been examined by the opposite party and Subhankar Paul has filed affidavit, paper No. 67/1 to 67/3. Shri Subhankar Paul has stated in affidavit the certificate allegedly issued by Shuhankar Paul is never

issued by him. He has stated in this respect that he never issued any such certificate to Shri Raghvendra Prakash Dewedi or any other person nor he had/has any authority or power to issue the same. He has further stated that he never prepared any such note nor any such note in existence and has also stated that the work and job on which Shri Dewedi was working had completed on 19-6-99, thereafter no work or job left for him in the centre and since work or job for which Shri Dewedi worked has already completed and does not exist at all therefore, neither Shri Dewedi nor any other person was engaged after 30-6-99 in the job, where Shri Dewedi was working. When Shri Paul has been cross-examined by the worker on 27-6-2003 and to a question he has stated that he has not issued any certificate on 2-9-99 & has also stated that polishing unit is closed. Therefore, in the circumstances the basis on which the worker built his fort collapsed. Thereafter, the worker tried to take help from other documents i.e. signing an indent slip dated 21-8-99 and out going slip. It is admitted fact that when any worker takes any item from stores he has to fill the indent-form and after getting the signatures of the section head the store mentioned in the indent slip is made available to the worker. For such indent slip the worker need not to be permanent, casual or temporary worker. Again worker of any category can obtain the signature of the section head on the indent slip and he can get the stores mentioned therein. The indent slip is paper No. 69/12 dated 21-8-99, this has no signatures of section head. In one place in the column of receipt there is a signature of the worker. But this indent slip does not necessarily proved that he was authorised to receive the stores by the section head. Once the worker was not on duty on 21-8-99 there was no reason of issuing stores to him. The worker has also tried to take help of out going slip, paper No. 3/20. Any person going inside the factory has to get the slip. It is not necessary that the worker was working in the factory and therefore, the out going slip was issued on 9-8-99.

The worker has tried to cook the evidence in his support which are not reliable.

In this case the worker has also filed self made documents i.e. paper No. 3/22 to 3/24. The workman has falsely stated in the claim statement that he was engaged as Technical Assistant on salary of Rs. 3900/- whereas he was a casual worker, the worker appointed for fixed period i.e. upto 30-6-99.

In (1998) 8 Supreme Court cases 733 State of Haryana Vs. Om Prakash & another the Hon'ble Court has held the daily rated workman working from 10-8-1985 to 30-6-1986, even in such a case, in absence of evidence to show that he had worked for 240 days, held the Labour Court erred in coming to the conclusion that he had worked for 240 days. In the present case the worker has not completed 240 days and therefore, he is not entitled to be reinstated. The opposite party has also filed SCD 1994

M. Venugopal Vs. The Divisional Manager, Life Insurance Corporation of India, Machilipatnam and others in which Hon'ble Supreme Court, Full Bench held, Termination of workman as a result of the non-renewal of contract of employment between the employer and the workman concerned on its expiry or terminaton of contract of service under a stipulation in that behalf contained in contract of employment, would not be covered under the definition of retrenchment. The facts of the present case is also same that the worker was initially engaged for 3 months and subsequently his contract was extended upto 30-6-99. It is also proved that he was engaged on job which exists no longer and therefore, the workman is not entitled to reinstatement.

The Hon'ble Allahabad High Court has held in M/s. Nirmal Organies Pvt. Ltd. Vs. The Presiding Officer, Industrial Tribunal & others (1995) (1) LBESR 887 that the workman worked in a period less than 12 calendar months, held, termination of service not attracted the provision of Section 6-N. The employer has sited following other case laws :

1. 1976 (33) FLR Page 303 (Kerala High Court) General Manager, K.S.R.T. Corp., Trivandrum Vs C. Sunder Raj, and others.
2. 1976 (33) FLR Page 313 (Karnataka High Court) Management of Mahadev Textile Mills Vs Additional Industrial Tribunal, Bangalore.
3. Civil Appeal No. 691 of 1962, Sur Enamel and Stamping Works Ltd. Vs. the workman, Full Bench decided on 7 May, 1963, published in domestic enquiry, page No. 157.

On the basis of discussion held above I come to the conclusion that the workman's services come to an end on 30-6-99 and he was not in employment on 1-7-99 and therefore there is no question of salary for the period of July & August, 99. The issue referred to this Court is therefore, decided accordingly and I come to the conclusion the worker is not entitled to any relief.

Lucknow SHRIKANT SHUKLA, Presiding Officer
11-9-2003

नई दिल्ली, 22 सितम्बर, 2003

का०आ० 2975.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आर्मी हैंडकवार्टर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नई दिल्ली के पंचाट (संदर्भ संख्या 59/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 22-9-2003 को प्राप्त हुआ था।

[सं० एल- 14011/4/2002-आई.आर.(डीयू)]

बी० एम० डेविड, अवर सचिव

New Delhi, the 22nd September, 2003

S. O. 2975.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 59/2002) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Army Head Quarter and their workmen, received by the Central Government on 22-9-2003.

[No. L-14011/4/2002-IR(DU)]

B. M. DAVID, Under Secy.

ANNEXURE

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
NEW DELHI

PRESIDING OFFICER : SHRI B. N. PANDEY

I. D. NO./59/2002

The General Secretary,
AHQ Canteen Employees Association,
Q Block Rajaji Marg,
New Delhi-110001

... Workman

Versus

The Quarter Master General,
Army Headquarters, Ministry of Defence,
South Block, DHQ Post Office,
New Delhi-110011

... Management

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-14011/4/2002)-IR(DU) dated 18-7-2002 has referred the following industrial dispute to this Tribunal for adjudication :—

“Whether the action of the management of Army Head Quarter, Ministry of Defence, Govt. of India, New Delhi in not giving the pay and other benefits similar to the pay and other benefits available to the Canteen employees of the Canteen Stores Deptt. of the Ministry of Defence and not giving them status of Central Govt. Employees is justified? If not to what relief the workmen are entitled?”

2. Reference was received and registered on 31-7-02 and since then neither workmen nor any authorised representative appeared on behalf of the workmen. Today also none on either side appeared despite notice and several dates for filing statement of claim workmen failed to file claim petition. Hence No dispute award given.

Dated : 17-9-03

B. N. PANDEY, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2003

का०आ० 2976.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चेन्नई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 12/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं० एल-39011/1/2001-आई. आर. (एम)]

सी० गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S.O. 2976.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 12/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Chennai Port Trust and their workman, received by the Central Government on 23-9-2003.

[No. L-39011/1/2001-IR (M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 9th September, 2003

PRESENT : K. JAYARAMAN,
Presiding Officer

Industrial Dispute No. 12/2002

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Chennai Port Trust and their workman Sri P. Jayaraman.

BETWEEN:

Sri P. Jayaraman : I Party/Workman

AND

The Chairman, : II Party/Management
Chennai Port Trust, Chennai.

APPEARANCES :

For the Workman : M/s. K. Raj & K. Marinath,
Advocates

For the Management : Mr. J. Sathya Narayana,
Prasad, Advocates

AWARD

The Central Government, Ministry of Labour vide Notification Order No. L-39011/1/2001-IR (M) dated 21-01-2001 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Chennai Port Trust in discharging Shri P. Jayaraman from the service w.e.f. 19-03-1997 is justified? If not to what relief the workman is entitled?”

2. After the receipt of the reference, it was taken on file as I.D. No. 12/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their respective Claim statement and counter Statement. In this case, no one has been examined as a witness on either side. 8 documents filed on the side of the I party/Workman were marked as Ex. W1 to W8 and 7 documents filed on the side of the II Party/Management were marked as M1 to M7.

3. The contention of the Petitioner in the Claim Statement is briefly as follows :—

The Petitioner Sri P. Jayaraman was appointed as Lascar Grade II in Marine Department of the II Party/Management on 1-7-70 and when he was working as Lascar Grade I in Marine Department, a charge memo was issued to him containing four charges stating that he was absented for duty from 6-10-1995 to 3-11-95, from 25-3-96 to 11-5-96, from 26-07-96 to 20-9-96 and 25-9-96 to 26-11-96 without prior permission of his superiors and his absent from duty is a misconduct, which warrants disciplinary action under sub-regulation 7 of Regulation 4 of the Madras Port Trust Employees (Conduct) Regulations, 1987. Along with the above charge memo, no statement of allegation and statement of witnesscs were furnished to the Petitioner and further an enquiry was conducted in a hastily manner without furnishing the Enquiry Officer's report and the punishment of discharge of the petitioner was ordered by the Deputy Port Conservator on 19-03-1997. Further, the II Party/Management while imposing the punishment of discharge from service has also taken note of earlier punishment. But, as per the service jurisprudence while taking into account the earlier punishment, the management should have given an opportunity to the Petitioner. But without giving such opportunity, the II Party/Management has imposed the punishment of discharge which is in violation of principles of natural justice. Further, the above said charge did not warrant such a serious punishment of discharge from service. The Petitioner's appeal to the Respondent was also rejected by its proceedings dated 16-08-1997. The said appeal has been disposed of in a routine manner without applying his mind. The review petition filed to the Union of India was also met the same fate. The punishment given by the Respondent is

disproportionate to the charges levelled against the Petitioner. The order passed by the II Party/Management is illegal, arbitrary and without any justification and hence, the Petitioner prays that an Award may be passed in his favour.

4. The II Party/Management in their Counter Statement has contended that no doubt Sri P. Jayaraman was appointed as Lascar Grade II and subsequently promoted to Grade I from 1-7-78 and then to the post of Head Lascar from 2-5-91. He was very irregular in his attendance right from the beginning of his appointment and hence he was reverted to the post of Lascar Grade I with effect from 8-4-92 but even after his reversion, he did not show any improvement in his attendance and hence he was discharged from Trust's service with effect from 15-7-93 after a departmental enquiry. Since he made an appeal to the Chairman of the II Party/ Management, and based on his assurance that he would be very much careful and regular in attendance, the order of discharge was revoked and he was reinstated in service from 4-8-93. But even after his reinstatement, there was no change in his attitude and he continued to be behaved in the same manner. Therefore, the charges were framed against him for his unauthorised absence and after due enquiry and after a report by the Enquiry Officer he was discharged from the services of the II Party/Management w.e.f. 19-03-97. He was warned for 15 times and his increment was withheld for three times and his pay was reduced to minimum once and he was reverted to a lower post once and also discharge from Trust's service once in 1993. Even after imposing all these punishments on him, he did not show any improvement and only due to irregular attendance again he was discharged from service. Even his appeal to the Appellate Authority and his review to the Government had been negatived rightly. Therefore, the II Party/ Management prays that the claim of the Petitioner may be dismissed with costs.

5. In these circumstances, the points to be decided in this case are as follows :—

- (i) “Whether the action of the management of Chennai Port Trust in discharging Sri P. Jayaraman from the service w.e.f. 19-3-97 is justified?”
- (ii) “To what relief the concerned workman is entitled?”

6. Point No. 1:—

In this case, the charge against the workman Sri P. Jayaraman, Lascar Grade I which alleged to have been proved in the domestic enquiry is that the Petitioner Shri. P. Jayaraman has been absented from duty in four spells without prior permission and his absence from duties is a misconduct which warrants disciplinary action under sub-regulation 7 of the Regulation 4 of the Madras Port Trust Employees (Conduct) Regulations, 1987.

7. It is an admitted fact that Sri P. Jayaraman was appointed as Lascar Grade II in the Marine Department of the Respondent/Port Trust on 1-7-1970 and he was promoted as Lascar Grade I on 1-8-1978 and then further promoted as Head Lascar on 02-05-1991. It is also admitted that he has been reverted to the post of Lascar Grade I from 8-4-1992 as a punishment.

8. In the case of the Respondent that the Petitioner was very irregular in his attendance and even after his reversion, he did not show any improvement in his attendance and he was discharged from service from 15-07-1993 after a departmental enquiry. Subsequently, on appeal to the Chairman of the Madras Port Trust and on his assurance that he would be very careful and regular in his attendance, he was reinstated in service from 4-8-1993. But even after that he was not changed and he continued to behave in the same manner. Hence, the charges were framed against him and after due enquiry and on report of the Enquiry Officer he was discharged from service w.e.f. 19-3-97 and therefore, there is no infirmity in the enquiry proceedings and the order passed by the Disciplinary Authority.

9. On behalf of the Petitioner, it is contended that the order of discharge from service was passed illegally, arbitrarily and without any justification. It is further contended that the procedure followed by the Respondent/Management in conducting the departmental proceedings was not just and proper. Even though the charge memo was issued containing four charges, neither the statement of allegations nor the statement of witnesses were furnished to the Petitioner. The enquiry was conducted in haste. Even though, the Enquiry Officer has stated that the delinquent employee has not accepted the charges against him, he has not examined any witness nor marked any documents in the presence of the petitioner to substantiate the claim of the Respondent/Management.

10. On behalf of the Respondent/Management, it is argued that the petitioner was very irregular in attendance and out of his total service of 26 years, the Petitioner was in active service for only 19½ years and he was granted leave without salary for over four years and with regard to the punishment, he was warned for 15 times, his increment was withheld thrice, his pay was reduced to minimum once and he was reverted to the lower post once and he was discharged from service once in 1993 and even after all these punishments, he was reinstated in service on his assurance that he would be very careful in future, but he has not shown any improvement. Only after these things, the management has taken a severe action and departmental action was taken against him and the procedure followed are very reasonable, just and proper and only after a reasonable opportunity, the punishment was imposed on the delinquent employee and therefore, there is nothing to dispute the procedure adopted by the Respondent/Management.

11. But on consideration, I find that there is no point in the Respondent/Management side because, the point to be decided in these circumstances of the case is “whether the enquiry conducted against the Petitioner is proper” and not the Petitioner was all along irregular in his attendance. In this case, though it is shown that the Petitioner was awarded punishments 15 times, we need not consider all these things and we have to consider “whether the domestic enquiry conducted by the Respondent/Management against the Petitioner with regard to the charges framed against him are just and proper?”

12. Again, the counsel for the petitioner argued that it is well settled in service jurisprudence that the Disciplinary Authority has to apply its mind upon the receipt of reply from the delinquent to the charge memo as to whether further enquiry is called for. But, in this case even before the reply was filed by the delinquent, the Disciplinary Authority namely the Madras Port Trust appointed the Enquiry Officer to go into the charges. This indicates his mind that the enquiry should proceed irrespective of the reply of the delinquent and it shows his biased attitude in this case. For this, he relied on a decision reported in AIR 2001 SC 343 in the case of STATE OF PUNJAB Vs. V.K. KHANNA.

13. On consideration, I find there is some point in his contention because in that decision, it is held that “*it is well settled in service jurisprudence that the authority has to apply its mind upon receipt of reply to the charge sheet or show cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations, it is in affirmative—the enquiry follows, but not otherwise. Thus, where even before reply was filed by the delinquent Chief Secretary to the charge sheet issued against him, the Chief Minister made an announcement appointing an Enquiry Officer to go into the charges, thus indicating its mindset that the inquiry shall proceed irrespective of the reply, it cannot be said that the attitude of the authorities towards the delinquent is free and fair.*” Thus in this case, even prior to the reply received from the delinquent, the Disciplinary Authority has appointed four Inquiry Officers for the charges against the delinquent employee. Therefore, it is clear that the inquiry conducted in this case is not just and proper.

14. Then the next point agitated by the Petitioner side is that the Enquiry Officer in this case, though has given a finding, he has passed unnecessary comments like the Petitioner deserves sever punishment and so on. Further, the Enquiry Officer's report was not furnished to the petitioner and this amounts to denial of reasonable opportunity and breach of principles of natural justice. For this the learned counsel for the Petitioner relied on the decision of Supreme Court reported in AIR 1994 SC 1074 MANAGING DIRECTOR, ECIL Vs. B. KARUNAKAR and also the decision of High Court of Madras reported in 1998 I LLJ

671 in the case of VICTOR J. Vs. G.M. RANI MANGAMMAL TRANSPORT CORPORATION, wherein the High Court of Madras has held that “*where the Inquiry Officer was other than the Disciplinary Authority, those proceedings break into two stages. The first stage ends when the Disciplinary Authority arrives at its conclusions on the basis of the evidence, Inquiry Officer's report and the delinquent employee's reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty on the basis of its conclusions. The second stage is not even reached, if the authority decides to drop the proceedings. The employee's right to receive the report of the Enquiry Officer is thus a part of the reasonable opportunity of defending himself in the first stage of inquiry. If this right is denied to him he is in effect denied the right to defend himself.*” In this case, it is alleged even in the Claim Statement that the Enquiry Officer's Report has not been given to him and no personal hearing was granted before the Disciplinary Authority as well as the Appellate Authority. Though in this case, the delinquent employee was shown not regular in his attendance, as I have already pointed out, the point to be decided in this case is “whether the enquiry conducted by the Respondent/Management is just and proper.” I find after due consideration of the entire materials produced before me that the enquiry conducted by the Respondent/Management is not just and proper.

15. The next contention of the learned counsel for the Petitioner is that four separate charges were framed against the delinquent employee and separate Enquiry Officers were appointed for the enquiry and they have given separate findings with regard to that separate enquiries, but the Disciplinary Authority has passed an order of discharge from service clubbing the charges mentioned in four separate findings in respect of the four separate incidents. Therefore, the order passed by the Disciplinary Authority is illegal and he placed much reliance on the decision reported in 1993 I MADRAS LAW JOURNAL REPORTS 532 in the case of BALU Vs. THE CHAIRMAN, TAMIL NADU HOUSING BOARD & ANOTHER. Again the advocate for the petitioner argued that the charge framed against the Petitioner do not warrant such a serious punishment of discharge from service, since all the charges framed against the Petitioner are only with regard to his absence from duty in four spells but, the Petitioner has denied the charges framed against him. But without following the normal procedure, the Enquiry Officer has come to a perverse finding and on that perverse finding, the Disciplinary Authority has come to a conclusion to discharge the Petitioner and therefore, it is not valid in law. Further, he relied on a decision of the High Court of Karnataka reported in 1990 I LLJ 137 in the case of RAMU Vs DISTRICT & SESSIONS JUDGE, KOLAR & OTHERS, wherein the High Court of Karnataka has observed that “*the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be*”

so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The Doctrine of Proportionality as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review.” He further argued that merely for the absence to duty, the punishment of discharge from service is irrational and is not proportionate to the offence committed by the delinquent employee and therefore, the impugned order has to be set aside by this Tribunal. It is his further contention that even the Petitioner's appeal before the Appellate Authority was disposed of in a summary manner or in a routine manner without affording any personal hearing or without any application of his mind. It is his further contention that the Supreme Court has clearly laid down in a case RAM CHANDER Vs. UNION OF INDIA AND OTHERS reported in AIR 1986 SC 1173 that “*it is of utmost importance after the Forty Second Amendment as interpreted by majority in TULSIRAM PATEL's case 1985 SCC 395 that the Appellate Authority must not only give a hearing to the Government servant concerned but also pass a reasonable order dealing with the contention raised by him in the appeal. An objective consideration is possible only if the delinquent employee is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. Consideration of fair play and justice also require that such a personal hearing should be given.*” The learned counsel further argued that in this case, no personal hearing was given and no reasonable opportunity was given to the Petitioner.

16. On the other hand, on behalf of the Respondent/Management, it is contended that as per the instructions of Government of India, Department of Personnel & Training O.M. No. 11012/20/85(Estt)/A dated 28-10-1995, it has been made clear that the Appellate Authority is at liberty to use his discretionary power of giving personal hearing based on the circumstances of the case. In this case, after the perusal of entire records, the Appellate Authority has come to a right conclusion and therefore, he has not given any personal hearing to the delinquent employee and it cannot be said that no opportunity has been given to the Petitioner.

17. But, again the learned counsel for the Petitioner has argued that the Disciplinary Authority while imposing the punishment of discharge from service against the Petitioner has taken into account the earlier punishments suffered by the Petitioner. But, it is well settled that while taking into account the earlier punishments, the management or the Disciplinary Authority should have given an opportunity to the Petitioner to meet the charge.

But, in this case without giving such an opportunity to the Petitioner, the Respondent/Management has imposed the major punishment. On this score also, the procedure followed by the Respondent/Management in the domestic enquiry is not valid in law.

18. I find some force in the contention of the learned counsel for the Petitioner. On due consideration of the entire evidence in this case and on a perusal of the records produced before me, I find even though the Petitioner was irregular in attendance and the charges were framed against him, the domestic enquiry was not conducted by the Respondent/Management in a proper way to prove the charges framed against the Petitioner and no reasonable opportunity was given to the Petitioner and therefore, the impugned order is to be set aside and as such I find this issue against the Respondent/Management.

19. The next point to be decided in this case is to what relief the Petitioner/Workman Sri P. Jayaraman is entitled?

In view of my foregoing findings, the action of the II Party/Management, the Chairman, Chennai Port Trust in discharging the Petitioner/Workman Sri P. Jayaraman from the service is not justified. Therefore, I find that Sri P. Jayaraman is to be reinstated in service. But, under the circumstances shown before this Tribunal, I find the Petitioner/Workman Sri P. Jayaraman should be reinstated in service by the II Party/Management Chennai Port Trust without any back wages. Ordered accordingly. No Cost.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 9th September, 2003).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side : None

Documents Marked :

For I Party/Workman :

Ex.No.	Date	Description
W1	23-12-96	Xerox copy of the Enquiry Officer's report.
W2	31-01-97	Xerox copy of the show cause notice issued to Petitioner.
W3	19-03-97	Xerox copy of the order of discharged passed by Deputy Port Conservator against the Petitioner.
W4	16-08-97	Xerox copy of the order of Appellate Authority.
W5	22-05-2000	Xerox copy of the letter from Petitioner to Assistant Labour Commissioner (Central) raising Industrial dispute.

W6	09-07-2001	Xerox copy of the order of Joint Secretary (Port), Ministry of Shipping, Ports Wing, New Delhi on the appeal of petitioner.
W7	01-07-93	Xerox copy of the memo issued to Petitioner by Respondent/Management.
W8	15-07-93	Xerox copy of the order of Deputy Port Conservator Discharging the Petitioner from service.

For II Party/Management :

Ex.No.	Date	Description
M1	29-12-95	Xerox copy of the charge memo along with Enquiry Officer's report.
M2	13-12-96	Xerox copy of the charge memo II along with Enquiry Officer's report.
M3	13-12-96	Xerox copy of the charge memo III along with Enquiry Officer's report.
M4	12-12-96	Xerox copy of the charge memo IV along with Enquiry Officer's report.
M5	19-03-97	Xerox copy of the order of discharged passed by Deputy Port Conservator against the Petitioner.
M6	16-08-97	Xerox copy of the order of Appellate Authority.
M7	09-07-2001	Xerox copy of the order of Joint Secretary (Port), Ministry of Shipping, Ports Wing, New Delhi on the appeal of the Petitioner.

नई दिल्ली, 24 सितम्बर, 2003

का०आ० 2977.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार चेन्नई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 73/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं० एल- 33011/5/2002-आई. आर. (एम)]

सी० गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2977.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 73/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai No. 2 as shown in the Annexure in the Industrial Dispute between the management of

Chennai Port Trust and their workman, received by the Central Government on 23-9-2003.

[No. L-33011/5/2002-IR(M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT
CHENNAI

Monday, the 15th September, 2003

Present : K. JAYARAMAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 73/2002

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of Chennai Port Trust and their workmen]

BETWEEN

The General Secretary, : I Party/Claimant
Madras Port United Labour,
Union, Chennai

AND

The Chairman, : II Party/Management
Chennai Port Trust,
Chennai

APPEARANCE :

For the Claimant : M/s. R. P. Panneerselvam &
R. Damodaran, Advocates.

For the Management : Mr. G. Venkataraman &
N. Krishnakumar, Advocates.

AWARD

The Central Government, Ministry of Labour vide Notification order No. L-33011/5/2002-IR(M) dated 6-08-2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the demand of the Madras Port United Labour Union to restore the seniority of Shri R. Senthivel in the category of Lascar Gr. II as on 2-7-92 is justified?”

2. After the receipt of the reference, it was taken on file as I.D. No.73/2002 and notices were issued to both the parties and both the parties entered appearance through their counsels and filed Claim Statement and Counter Statement respectively. In this case, no one was examined as a witness on either side. Documents filed on either side were marked as Ex. W1 to W3 and M1 to M8 respectively.

3. The contention of the Petitioner Union in the Claim Statement is as follows :—

One Sri R. Senthivel was appointed as Lascar Grade II in Marine Survey of the Engineering Department of the II Party/Management on 2-7-1992. Subsequently, as per his request, he was appointed as Lab Attendant cum Section Cutter from 1-8-1994. His probation was declared in the Lascar Grade II, Marine Survey post on 3-8-1994 and his probation in the post of Lab Attendant cum Section Cutter has been declared on 22-8-96. The said Sri R. Senthivel has requested the II Party/Management to revert back to his substantive post Lascar Grade II, Marine Survey and it was considered by the II Party/Management without any changes regarding his seniority with effect from 17-8-99. While working as Lascar Grade II in Marine Survey Engineering Department and after lapse of one year duration on 10-10-2000, Sri R. Senthivel was placed as junior most to Sri C. Sekar, Lascar Grade II, Marine Survey, who was appointed only on 3-4-1999, fixing his seniority. With regard to this order, Sri R. Senthivel submitted a protest letter to the Chief Engineer of the II Party/Management. The entire action of the II Party/Management, Chennai Port Trust is illegal and bad in law. Further, the II Party/Management did not grant any opportunity of hearing to Sri R. Senthivel before passing the order of placing his seniority as junior to Sri C. Sekar, Lascar Grade II, Marine Survey. It is clearly in violation of natural justice. If it is accepted, then it affects his entire career and denies his future promotion also. This has caused the concerned workman untold misery, mental agony and resulted in financial loss etc. The application of the concerned workman has not been considered and therefore, the Petitioner Union prays an Award in favour of the concerned workman.

4. As against this, the Respondent/Management in their Counter Statement has contended that Sri R. Senthivel was appointed as Lascar Grade II on 2-7-1992 and subsequently he was appointed on his own request as Lab Attendant cum Section Cutter from 1-8-1994 in the pay scale of Rs. 1075-30-1195-35-1580 and he opted to be appointed to the Lab Attendant because the said post carries more salary and was higher to the post of Lascar Grade II. Therefore, on his completion of the period of probation in the post of Lab Attendant cum Section Cutter, he ceased to have lien on the post of Lascar Grade II. Since the Lascar Grade II have promotional avenue again Sri R. Senthivel requested the II Party/Management that he may be reverted to the post of Lascar Grade II with effect from 17-8-99. He was reverted as such without mentioning about his seniority in the reverted post and the Petitioner Union has deliberately suppressed the facts. Thus, the said Sri R. Senthivel entered back to the post of Grade II Lascar on his own request. Since the Respondent received number of representations from the juniors of Sri R. Senthivel, who are in the post of Lascar Grade II that his reversion would affect their promotional opportunities and they requested that Sri R. Senthivel may be treated as

junior most in that category after his reversion. Therefore, he cannot in the matter of seniority supersede the persons who were appointed as Lascar Grade II during the period from 1-8-94 to 17-8-99 and got confirmed in the said post. The whole issue was reviewed by the Chief Engineer, Chennai Port Trust and on his order, he will be treated as junior most in the post of Lascar Grade II on the date of his reversion as Lascar Grade II i.e. on 17-8-1999. As per the Government instructions contained in para 12 and 14 under the head "Lien" in the Revised Confirmation Procedure, the lien in the lower post gets terminated as soon as the officer/employee is declared to have completed the period of probation satisfactorily in his higher post by the Competent Authority. Since Sri R. Senthivel was declared as an approved probationer in the higher post of Lab Attendant-Cum-Section Cutter on 22-8-96, his lien in the post of Lascar Grade II ceased to exist from 22-8-96 and therefore, the contention of the said Sri R. Senthivel is incorrect and hence, the claim of the Petitioner Union is to be rejected.

6. In the circumstances, the points to be decided in this case are as follows :

- (i) "Whether the demand of the Madras Port United Labour Union to restore the seniority of Sri R. Senthivel in the category of Lascar Grade II as on 2-7-92 is justified?
- (ii) To what relief the concerned workman is entitled ?"

7. Point No. 1:—

It is the admitted case of both sides that Sri R. Senthivel, whose cause the Petitioner union is espousing, was appointed as Lascar Grade II Marine Survey under the original of Ex. M1 and he joined in the Respondent Trust on 2-7-92 in the scale of pay Rs. 1065-20-1145-30-1265-35-1545. Subsequently, on his request he was appointed as Lab Attendant Cum Section Cutter from 1-8-94 in the scale of pay of Rs. 1075-30-1195-35-1580 and in Lascar Grade II post he was confirmed on 4-8-94 (under paper confirmation) and in Lab Attendant-Cum-Section Cutter post he was confirmed on 22-8-96, while he was serving as Lab Attendant Cum Section Cutter he was given a letter requesting the Respondent Trust to revert back him to his original post namely as Lascar Grade II as there is no promotional avenues in the post of Lab Attendant Cum Section Cutter. On considering his request, the Respondent Trust has reverted him as Lascar Grade II with effect from 17-8-99 afternoon. While so, on 17-8-99, the Chief Engineer of the Respondent Trust have reviewed the issue of seniority and placed the said R. Senthivel below one Sri C. Sekar who is far junior to him. Therefore, the Petitioner Union has come to this Tribunal with an industrial dispute.

8. On behalf of the Petitioner, it is argued that the Respondent has contended is the Counter statement that

under the original of Ex. W1 the said R. Senthivel was reverted to the post of Lascar Grade II as a special case without mentioning about his seniority in the reverted post as he did not hold lien in that post and it was further stated that there was no assurance of any nature in the letter dated 9-8-99 under the original of Ex. W1 and the Petitioner Union has deliberately suppressed this fact, but on the other hand, even in Ex. W1 a copy of which is also produced as document No. 7 by the II Party/Management, wherein the Chief Engineer has clearly mentioned that as regards fixing his seniority to the post of Lascar Grade II should not be altered and necessary posting orders may be issued to him. In that circumstances, it is the II Party Management who has intentionally suppressed the order passed by the Chief Engineer and despatched to Sri R. Senthivel and therefore, the Respondent is not fair in their contention. Again, on behalf of the Petitioner it is argued that even though the Respondent has contended that the Chief Engineer has reviewed the issue of seniority and fixed the seniority and fixed the seniority of Sri R. Senthivel below one Mr. Sekar, after one year duration, the II Party/Management without affording any chance to Sri R. Senthivel to put forth his defence has passed an order dated 10-10-2000 behind his back. It is a clear violation of principles of natural justice guaranteed under Article 14 and 311 of Constitution.

9. On the other hand, on behalf of the Respondent, it is argued that after the reversion of Sri R. Senthivel, the Respondent Trust has received a number of representations from the juniors of Sri R. Senthivel, who were in the post of Lascar Grade II stating that Sri R. Senthivel's reversion to the post of Lascar Grade II would affect their promotional opportunities and hence they requested that Sri R. Senthivel may be placed below them in the seniority, as the reversion was made at his request. Therefore, on considering the matter of seniority, the whole issue was reviewed by the Chief Engineer, Respondent Trust and therefore, he has placed Sri R. Senthivel as the junior most in the Lascar Grade II post from the date of his reversion i.e. 17-8-99 and passed an order under the Ex. W2. Only on his own volition, Sri R. Senthivel has been reverted from the post of Lab Attendant Cum Section Cutter to the post of Lascar Grade II and further when he has accepted the offer of appointment to the post of Lab Attendant Cum Section Cutter, he has not claimed to have any lien in the post of Lascar Grade II. Therefore, after due consideration, the Chief Engineer has placed his seniority below Sri C. Sekar. Further, when he has no right to question the same, the question of giving opportunity will not arise at all. Further more the Chief Engineer has got every right to re-fix the seniority among the employees and the order dated 10-10-2000 was issued based on the review of incorrect Communication and therefore, at this juncture, there is no necessity to interfere with the order passed by the Chief Engineer.

10. But, on behalf of the petitioner it is argued that the order passed on 10-10-2002 under Ex. W2 against its employee namely R. Senthivel Lascar Grade II does not incorporate under which provision of the rule the above order was passed. In other words, the above order is nothing but a blanket order. The said R. Senthivel was employed under the same employer namely Port Trust of Chennai. Even though the recruitment ought to have been made for different posts, the benefit of service already rendered in a similar post in similar organisation under the same employer will have to be given to the person appointed on the new post. In this case, even though Sri R. Senthivel was appointed as Lab Attendant Cum Section Cutter, his original post is only Lascar Grade II in the marine Department. Both the departments are under the control of the Respondent Trust. Therefore, his seniority must be from the date of his appointment as Lascar Grade II i.e. from 2-7-1992 and not from the date of 17-8-1999. Further, the learned counsel for the Petitioner relied on the rulings of Supreme Court reported in 2002 III LLJ 516 in the case of LAKSHMI PRECISION SCREWS LTD. Vs. RAM BAHAGAT and 1993 II LLJ 696 in the case of D.K. YADAV Vs. J.M.A. INDUSTRIES LTD., wherein the Supreme Court has observed that " Doctrine of Natural Justice was an inbuilt requirement of the Standing Orders. The notice referred to above of the appellant could not be considered to be in strict compliance with the standing orders and did not come within the ambit of that order." Relying upon this judgement, the counsel for the Petitioner argued that the principles of natural justice were ignored by the II Party/Management, while passing the order dated 10-10-2000 under Ex. W2 fixing the seniority of Sri R. Senthivel to the junior-most as on 17-8-99. Further, in this case, no opportunity was given to the concerned workman and no enquiry was held and hence, the principles of natural justice has been violated. Therefore, the order impugned has become arbitrary, unjust and unfair and the denial of original seniority amounts to Sri R. Senthivel denial of promotion guaranteed under the Article 14 of the Constitution.

11. But, again the learned counsel for the Respondent argued that the question of giving an opportunity to the Petitioner in this matter for fixation of seniority does not arise because it is only on account of his own volition, he again posted as Lascar Grade II and therefore, he should rank junior to the Lascar Grade II appointees between the period 1-8-94 to 17-8-99 and on completion of probation in the post of Lab Attendant Cum Section Cutter i.e. from 22-8-96, he ceased to have any right in the post of Lascar Grade II and therefore, he cannot question the review order passed by the Chief Engineer under Ex. W2.

12. But, though I find some force in this contention, even assuming that the Chief Engineer has got every right to review the seniority of Sri R. Senthivel, I find in this

case, the Respondent/Management has not given any opportunity before passing the order under Ex. W2 because by this order Sri R. Senthivel was placed below Sri C. Sekar, Lascar Grade II who was appointed during the year 1999, thus affecting Sri R. Senthivel's future and promotional opportunities and as such, the order passed by the Chief Engineer of the II Party/Management Trust is not valid in law. Further, in this case, even though it is stated that the Chief Engineer of the II Party/Management Trust has got every power to review the seniority among the employees, it was not stated under what provision or procedure or rules or regulations the Chief Engineer can fix the seniority of the employees without giving notice and without hearing their grievances and then fix their seniority. Though the learned counsel for the Respondent argued that the rectification of the mistake based on the review made does not affect any right of the concerned workman, I find the order passed by the Chief Engineer of the II Party/Management affects the right of Sri R. Senthivel and his future also affected by the order impugned. Further, in view of my finding, the seniority of a person regularly appointed to the post according to the provisions and regulations at the time of initial appointment and not according to the date of confirmation or date of joining in the post of Lab Attendant Cum Section Cutter, I find the seniority of Sri R. Senthivel must be restored to his original position i.e. on 02-07-1992. As such, I find this point in favour of the Petitioner.

13. Point No. 2 :—

The next point to be decided in this case is to what relief the concerned workman Sri R. Senthivel is entitled?

In view of the findings above, the seniority of Sri R. Senthivel, the concerned workman in this industrial dispute, must be restored to 02-07-1992 in the category of Lascar Grade II in the Respondent Chennai Port Trust. Ordered accordingly. No Costs.

14. The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th September, 2003.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For I party/Workman :—

Ex. No.	Date	Description
W1	09-08-99	Xerox copy of the letter from Chief Engineer, Chennai Port Trust to concerned workman regarding his reversion.

W2 10-10-2000 Xerox copy of the letter from Chief Engineer, Chennai Port Trust to concerned workman regarding fixing his seniority.

W3 21-10-2000 Xerox copy of the letter from concerned workman to Chief Engineer, Chennai Port Trust.

For II Party/Management

Ex. No.	Date	Description
M1	18-06-92	Xerox copy of the order of offer of appointment issued to concerned workman.
M2	17-03-94	Xerox copy of the application of concerned workman for the post of lab attendant-cum-section cutter.
M3	30-07-94	Xerox copy of the order of offer of appointment issued to concerned workman as Laboratory Attendant.
M4	17-07-96	Xerox copy of the order of confirmation issued to concerned workman in the post of Lascar Gr. II
M5	19-09-96	Xerox copy of the order of confirmation issued to concerned workman in the post of Laboratory Attendant.
M6	29-01-99	Xerox copy of the representation submitted by concerned workman to Chief Engineer, Chennai Port Trust.
M7	08-03-2000	Xerox copy of the letter from the Petitioner Union to the Chairman, Chennai Port Trust.
M8	14-06-95	Extract from the proceedings of Board meeting No. 2 of 1995-96 held on 14-6-95.

नई दिल्ली, 24 सितम्बर, 2003

का०आ० 2978.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 728/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[फा. सं० एल-12012/179/99-आई. आर (बी II)]

सी० गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2978.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 728/2001) of the Central Government Industrial Tribunal-cum-

Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Indian Bank and their workman, received by the Central Government on 23-9-2003.

[F. No. L-12012/179/1999-IR(B. II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Wednesday, the 3rd September, 2003

PRESENT : K. Jayaraman

Presiding Officer

INDUSTRIAL DISPUTE NO. 728/2001

(Tamil Nadu Principal Labour Court CGID
No. 378/99)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian Bank and their workmen).

BETWEEN :

The General Secretary : I Party/Claimant
Indian Bank Employees Union,
Chennai

AND

The Zonal Manager : II Party/Management
Indian Bank, Zonal Office,
Trichy

APPEARANCES :

For the Claimant : M/s. K. J. Arunachalam,
Authorized Representative

For the Management : M/s. Aiyar & Dolia,
Sri N. Krishnakumar,
Advocates

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12012/179/99-IR(B-II) dated 12-11-1999 has earlier referred this industrial dispute to Tamil Nadu Principal Labour Court, Chennai for adjudication. The Tamil Nadu Principal Labour Court has taken the same on its file as CGID. No. 378/99 and after the constitution of this Central Govt. Industrial Tribunal-cum-Labour Court, the said Industrial Dispute was transferred to this Tribunal and after getting the same, it was numbered as I.D. No. 728/2001. The dispute referred by the Govt. in the Schedule is hereunder :—

"Whether the action of the management of Indian Bank, Chennai in terminating the services of Smt. Annakamu, Sweeper is justified? If not, to what relief, she is entitled?"

2. After notices to both sides, the Petitioner/concerned employee appeared through an Authorised Representative and the Respondent appeared through an Advocate. Both sides have filed their respective Claim Statement and Counter Statement.

3. The allegations made in the Claim Statement of the Petitioner Union are as follows :—

The concerned employee Smt. Annakamu has been engaged as a temporary sweeper during the leave periods of the permanent part-time sweeper at the Palani branch of the respondent/bank. She was engaged since 1990 and she has worked more than 250 days. The concerned employee also had registered her name in Employment Exchange in the year 1990. On the retirement of the permanent part-time sweeper at Palani branch, the Respondent management should have absorbed Smt. Annakamu in that vacancy who was only a temporary sub-staff at that branch at that time. But the respondent/management has deliberately empanelled additional two temporary sweepers and appointed one Mr. Palanichamy in the place of permanent vacancy. As per the Career Path Settlement between the petitioner union and the respondent/management, the vacancy of sweeper post with higher scale wages in a branch shall have to be filled in from among the sweeper employees drawing lesser scale wages in any of the branch in the same district. If the Respondent/Management adopted this basic norms, the name of the concerned employee ought to have been given preference as she being the senior most and having worked for more than 256 days as temporary part-time sweeper and therefore, the action of the Respondent/Bank in denying the employee, the legitimate absorption as permanent-part time employee at the Palani (BOT) is arbitrary, unjustified and illegal. Therefore, the concerned employee Smt. Annakamu is entitled to the relief of absorption in the respondent/Bank as a permanent part time sweeper with all monetary benefits, continuity of service and all other attendant benefits. Therefore, the petitioner union prays that an Award may be passed in their favour.

4. The Respondent/Management in their Counter Statement has contended that the concerned employee Mrs. Annakamu could not be considered for permanent absorption because she was not sponsored through employment exchange and her engagement was on need basis and intermittent only. The Respondent/Bank is a Public Sector Bank and is bound to adhere to the guidelines issued by Government of India in regard to recruitment of all cadres including sub-staff category. As per the guidelines, the Respondent Bank has to call for

candidates from the Employment Exchange and subject to their satisfying the norms relating to age, educational qualification etc. an interview is to be conducted and the candidates so selected are appointed as permanent part time sweepers. The concerned workman Smt. Annakamu has not been engaged for 240 days in any of these years from 1990 to 1996. Therefore, registering her name in Employment Exchange will not give any priority over others for appointment, unless her name is sponsored by employment exchange for filling up the vacancy caused at Palani. One permanent part-time sweeper Mrs. Kamatchi had worked at Palani Branch and retired on 30-6-97 and for that vacancy the concerned workman's name along with two other persons engaged as sweepers on rotational basis were considered and as per the settlement entered into between the Respondent Bank and the Petitioner Union i.e. after 1-8-93 the employment could be made only through employment exchange and therefore, as per clauses 1 to 4 of the said Settlement Mr. Palanichamy who had been working in Palani (BOT Branch) as part time sweeper with 1/3rd scale of wages was given career progression to work as part-time sweeper on half scale wages in Palani main branch. Therefore, the Respondent/Bank has acted in accordance with the terms of Settlement dated 28-7-93. In any event, being a casual engagement intermittently, the concerned employee cannot have any right to claim absorption as sweeper in the services of the Respondent/Bank. Hence, the Respondent prays that the claim may be dismissed with costs.

5. Again in the rejoinder statement, the petitioner union has contended that after having engaged the concerned employee Smt. Annakamu initially during leave periods of permanent incumbents from 1-7-90 continuously against permanent sweeper vacancy, the Respondent/Bank is not entitled to say that the concerned employee was not appointed by the competent authority to any post and as she has not been sponsored by Employment Exchange. When there is a subsisting legally binding settlement between the parties, the Respondent/Bank cannot contend that they have followed the instructions of the Govt. and therefore, the contention is not valid. Further as per the settlement entered into between the Union and the Respondent/Bank, the vacancies arising out of retirement/promotion or re-designation should be filled within six months and without doing the same within six months, they wanted to take advantage of the other clauses in the settlement deed. Hence, the petitioner union prays that the claim may be allowed.

6. In these circumstances, the points for determination in this case are as follows :—

- (i) "Whether the action of the management of Indian Bank Chennai in terminating the services of Smt. Annakamu, sweeper is justified?"

(ii) "Two what relief the concerned workman is entitled?"

7. Point No. 1 :—

In this case, the contention of the Petitioner Union is that after having engaged the concerned employee Smt. Annakamu as sweeper in Palani branch of the Respondent /Bank from January, 1990, the Respondent cannot now contend that her engagement was not proper, not legal and so on. Further, it is the contention of the petitioner Union that the concerned employee was engaged continuously and therefore, her services should regular in nature and not to meet the exigencies of the branch in any particular period as alleged by the Respondent. To substantiate their claim, on behalf of the Petitioner Union, seven documents namely Ex. W1 to W7 were marked. In that Ex. W4 is the particulars of the temporary engagement of Smt. Annakamu at Palani branch of the Respondent/Bank Ex. W3 is the copy of the Employment Exchange registration card of the concerned employee Smt. Annakamu. Ex. W2 is the copy of S.B. account pass book of Smt. Annakamu. Ex. W5 is the copy of the settlement under Section 18(1) entered into between the Indian Bank Management and Federation of Indian bank Employees Union dated 29-7-1993 and Ex. W6 and W7 are the Xerox copies of the dispute raised by the Petitioner Union before the Assistant Labour Commissioner (Central) and the reply filed by the Petitioner Union for the contention of the Respondent/Management.

8. The respondent/Management contended that it is false to allege that Smt. Annakamu was engaged as a temporary sub-staff from January, 1990 at Palani branch of the Respondent/Bank. On the other hand, her engagement was on need basis and intermittently on casual basis. Further, her employment was only on day to day casual basis and that too by the Branch Manager without due permission and approval of the competent authority. Further, it is contended on behalf of the Respondent/Bank that the Central Government under whose control, the Respondent/Bank is functioning has issued circulars to the effect that no person should be engaged irrespective of the capacity either permanent or temporary without having duly sponsored by the Employment Exchange and therefore, the initial appointment of Smt. Annakamu was only casual. For this, they have filed six documents which were marked as Ex. M1 to M6. Ex. M1 and M5 are Government of India instructions issued on 30-9-78 and 16-8-90 respectively. Ex. M6 is the Reserve Bank of India instructions issued on 26-06-1996. Ex. M3 is the circular containing norms for determination of wages for part time sweepers. Ex. M2 and M4 are the copy of circulars of the Respondent/ Bank dated 18-11-80 and 8-3-83. It is the contention of the Respondent that a settlement was entered into between

the Union and the Respondent/Bank on 6-7-92 with regard to temporary or casual employees engaged in leave vacancies of sub-staff. It is further argued that the settlement pertains to such of those casual employees employed during the period between 1-1-82 to 31-12-89 as a one time measure and for a specific purpose and for a specific period of time and in this case Smt. Annakamu was never utilized as a casual employee during the said period and therefore, the concerned employee Smt. Annakamu is not entitled to be included in the list of temporary employees. It is further contended that the initial appointment of Smt. Annakamu itself was an unauthorised and without permission or approval of the higher authorities and therefore, her temporary appointment is by back door method and hence, she cannot be made permanent. For this, the Respondent/ Management relied on 1999 II LLJ 1173 in the case of CALCUTTA TRAMWAYS COMPANY (1978) LTD. & ORS. Vs. RAMESH AND 17 OTHERS and another Authority reported in 2003 II LLJ 948 UNION OF INDIA Vs. LEKH RAJ AND OTHERS, Wherein, it was observed that *"appointment to a permanent service must be made in the terms of recruitment rules. For that purpose, there must existance of the vacancy. A person appointed through back door i.e. not in conformity with the rules could not claim permanency in service.....if the initial appointment was illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following the procedure cannot claim as a matter of right to be regularised."* Further, the respondent placed much reliance in the case reported in 1997 II LLJ 331, UNION OF INDIA Vs. BISHAMBER DUTT, wherein the Hon'ble Supreme Court has held that *"unless a person is appointment on regular basis according to rules after consideration of the claims of merits, there is no question of regularisation on his service."* Further, they have relied on the judgment of Hon'ble Supreme Court in the case of MDHYAMIK SIKSHA PARISHAD U.P. Vs. ANIL KUMAR MISHRA & OTHERS as reported in AIR 1994 SC 1638, wherein it is held that *".....there were, no sanctioned posts in existence to which they could be said to have been appointed. The assignment was on ad-hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of provisions of Industrial Disputes Act, 1947 importing the incidents of completing of 240 days work....the completion of 240 days work does not under that law import of the right to regularisation."* Therefore, it is argued on behalf of the respondent that the petitioner Smt. Annakamu has no claim for regularisation in the permanent post of the part time sweeper vacancy.

9. On the other hand, on behalf of the Petitioner, it is contended that it is not correct to say that Smt. Annakamu was engaged intermittently and for need based situations, but she was engaged continuously and

further, the Respondent/Bank having utilised the services of Smt. Annakamu for a long and continuous period they are now estopped from contending that Smt. Annakamu was not sponsored by the Employment Exchange or that she did not undergo the selection process as contemplated under the rules and regulations. They further contended that even after the so called circulars of the Govt. the bank has entered into settlement with the workman as per the Industrial Disputes Act under Section 12(3) for the engagement of various sub-staff in the respondent/bank. Therefore, it is futile to contend that no temporary sub-staff can be regularised who were not sponsored by the Employment Exchange.

10. Again, on behalf of the Respondent, it is contended that as per the Settlement entered into between the Union and the management dated 28-7-93 that after 1-8-93 any permanent vacancy arising on the retirement of permanent part-time sweeper could be made only through Employment Exchange, the only exception is that vacancy that arises in higher scale at places where the bank has more than one branch could be filled from the persons drawing lower wages at the branches in the same place. In this case admittedly, the vacancy caused on account of the retirement of Mrs. Kamatchi at Palani main Branch had arisen on 30-6-97. By enforcing the above said exception one Mr. Palanisamy who was working in the Indian Bank (BOT) branch as part-time sweeper with 1/3rd scale wages was given career path progression, to work as part-time sweeper on 1/2 scale wages in the above Palani branch.

11. I find much force in this contention of the respondent/management. Therefore, the Petitioner Union cannot contend that the temporary employee Smt. Annakamu should be absorbed in the vacancy of Palani branch as part-time sweeper.

12. Therefore, on consideration of the entire evidence in this case I find much force in the contention of the Respondent/Bank because it is well settled that no person can be appointed to any post in a nationalised bank not being sponsored by Employment Exchange. Further, it is not the contention of the Petitioner Union that any other settlement was entered into between the Respondent/Bank management and the Petitioner Union with regard to this kind of temporary employment. Under such circumstances, it cannot be contended that temporary/casual appointment of Smt. Annakamu can be regularised by the Respondent/Bank. Further the decisions relied on by the respondent clearly envisaged that such temporary appointments are illegal and they cannot be regularised. Therefore for the foregoing reasons the concerned employee Smt. Annakamu who was the casual employee, has no right to claim as a permanent employee though she worked for a long period intermittently. Therefore, I find this point against the concerned employee Smt. Annakamu.

13. The next point to be decided in this case is to what relief the concerned workman is entitled.

In view of my findings above the concerned employee in this industrial dispute Smt. Annakamu is not entitled to claim any relief against the respondent/Indian Bank, I find, the claim of the I Party/Union made on behalf of the concerned workman cannot be granted against the II Party/Indian Bank No Costs.

14. Thus the reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 3rd September, 2003).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :

On either side : None

Documents Marked :—

For the I Party/Claimant :—

Ex. No.	Date	Description
W1	Nil	Xerox copy of the letter of concerned employee Smt. Annakamu to Indian Bank Employees Union.
W2	Nil	Xerox copy of the S.B. pass book of concerned employee A/c. No. 13336.
W3	Nil	Xerox copy of the Employment Exchange card of the Concerned employee.
W4	Nil	Xerox copy of the statement containing service Particulars of concerned employee.
W5	29-7-93	Xerox copy of the settlement u/s 13(1) entered into Between Indian Bank and Indian Bank Employees Union.
W6	25-9-97	Xerox copy of the letter from Indian Bank Employees Union to Assistant Labour Commissioner (Central) regarding Termination of concerned employee.
W7	16-12-98	Xerox copy of the letter from Indian Bank Employees Union to Assistant Labour Commissioner (Central) raising an Industrial Dispute.

For the II Party/Management :—

Ex. No.	Date	Description
M1	30-9-78	Xerox copy of the letter from Ministry of the Finance to All the Heads of Banks and Financial Institutions regarding Recruitment of sub-staff in public sector banks.

M2	18-11-80	Xerox copy of the circular issued by Personnel Deptt. To All Regional/ Zonal/Area Managers of Indian Bank regarding Norms relating to wages of part-time sweepers.
M3	4-3-83	Xerox copy of the circular issued by Personnel Deptt. To all branches of Indian Bank regarding engagement of persons during leave vacancies of substaff.
M4	8-3-83	Xerox copy of the circular issued by Head Office to all branches regarding staff housing loan & appointment of part-time employees.
M5	16-8-90	Xerox copy of the letter from Ministry of Finance to all the Chief Executives of Banks regarding Recruitment and absorption of temporary sub-staff in public sector banks.
M6	26-6-96	Xerox copy of the letter issued by Reserve Bank of India to the Chairman, Indian Bank regarding Achievement of capital adequacy ratio of 8 per cent.

नई दिल्ली, 24 सितम्बर, 2003

का० आ० 2979.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 667/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल- 12012/248/98-आई. आर. (बी II)]

सौ. गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2979.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 667/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 23-9-2003.

[No. L-12012/248/98-IR(B. II)]
C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM-LABOUR COURT
CHENNAI

Wednesday, the 3rd September, 2003

Present : K. JAYARAMAN

PRESIDING OFFICER

INDUSTRIAL DISPUTE NO. 667/2001

(Tamil Nadu Principal Labour Court CGID
No. 251/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of Indian Bank and their workmen)

BETWEEN

The General Secretary : I Party/Claimant
Indian Bank, Employees Union

AND

The General Manager, : II Party/Management
Indian Bank, Chennai

Appearance :

For the Claimant : Mr. K. J. Arunachalam,
Authorised Representative

For the Management : M/s. Aiyar & Dolia,
Sri N. Krishnakumar,
Advocate

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12012/248/98-IR(B-II) dated 19-04-1999 has earlier referred this industrial dispute to Tamil Nadu Principal Labour Court, Chennai for adjudication. The Tamil Nadu Principal Labour Court has taken the same or its file as ID. No. 251/99 and after the constitution of this Central Govt. Industrial Tribunal cum Labour Court, the said industrial dispute was transferred to this Tribunal and after getting the same, it was numbered as I.D. No. 667/2001. The dispute referred by the Govt. in the Schedule is hereunder :—

“Whether the management of Indian Bank, is justified in disengaging Shri T. Selvaraj, temporary sub-staff from the services of the bank and if not, to what relief, the workman is entitled?

2. After numbering the industrial dispute, this Court has issued notices to both parties. The Petitioner Union represented through an Authorised Representative and the Respondent/Bank was represented by an Advocate and they have filed their Claim Statement and Counter Statement respectively.

3. The allegations made in the Claim Statement of the Petitioner are as follows :

The concerned workman Sri T. Selvaraj was initially engaged as a temporary sub-staff on 17-8-1991 at East Abhiramapuram branch, Chennai of the Respondent/Bank. He served from 17-8-91 to 6-2-98 as a temporary sub-staff for a period 430 days. The Federation of Indian Bank Employees Union and the Respondent/Management have entered into a settlement under section 12(3) of Industrial Disputes Act, 1947 regarding empanelment of temporary sub-staff employee and their regularisation into permanent service of the Respondent/Bank. The concerned workman Sri T. Selvaraj, belongs to Scheduled Caste community and has studied upto IXth standard and has also registered his name in Employment Exchange. Therefore, his claim falls well within the purview of subsisting legally binding settlement arrived at under the provisions of Industrial Disputes Act, 1947 in the matter of regularisation of temporary employees into permanent sub-staff cadre. But, without considering all these things, the Respondent/Bank Management has terminated the services of Sri T. Selvaraj without compliance of mandatory provisions of Industrial Disputes Act, 1947. Therefore, the termination of the services of Sri T. Selvaraj without notice is in violation of para 522(4) of Sastri Award. Hence, the Petitioner Union prays that an Award may be passed in favour of the concerned employee Sri T. Selvaraj.

4. As against this, the Respondent/Management in their Counter Statement contended that it is not true to say that Sri T. Selvaraj was engaged as temporary sub-staff from 17-8-1991 at the Respondent/Bank branch. His engagement was on needs basis and intermittently on casual basis. The concerned employee's engagement was only on day to day/casual basis which was resorted to by the branch management without a permission and approval of the Competent Authority. Further, he was not continuously engaged in the branch office and therefore, he cannot claim any benefit under any of the provisions of the Act. The Respondent/Bank has been having a system of maintaining a panel of temporary sub-staff to work in leave vacancies of permanent sub-staff, going on leave in branches. The engagement of empanelled sub-staff has been on day to day basis and such casual employees are paid daily wages. But the concerned employee Sri T. Selvaraj's name has not been included in the said panel. As early as on 30-9-78, the Ministry of Finance, Government of India has directed all the financial institution that no person could be engaged irrespective of the capacity either permanent or temporary without being duly sponsored by the Employment Exchange. In consequence of that the Respondent/Bank even in 1983 has set out norms for engaging temporary sub-staff in the leave vacancies through the maintenance of panel. Therefore, the Petitioner who has worked as Casual Labour engaged on day to day basis cannot claim that he had worked more than 237 days and it has no relevance for permanent appointment. The concerned employee has

also availed of a loan for purchase of an auto rickshaw from the bank and thus he was gainfully self-employed by himself playing the auto rickshaw. The Respondent Bank and also the Petitioner union had entered into an agreement dated 6-7-92 under clause 12(3) of Industrial Disputes Act, 1947 for regularisation of temporary sub-staff worked during the period 1-1-82 to 31-12-89 as a one-time measure. That settlement was entered into for a specific purpose and for a specific period of time and the Petitioner Sri T. Selvaraj was never utilised as a temporary sub-staff during the period 1-1-82 to 31-12-89. Therefore, he is not eligible to be even empanelled as per provisions of the above settlement. Further, the Petitioner's mere registration of name in the Employment Exchange does not confer any right for his regular absorption. He was not sponsored by Employment Exchange. Admittedly he is over-qualified for being appointed as a sub-staff. Since the initial engagement of Sri T. Selvaraj itself was an unauthorised, he is not entitled to claim any benefits under any provision. The provisions of Sastri Award have no application to the instant case and these clauses apply only to those persons who have been selected as temporary sub-staff in the panel made by the bank in accordance with rules and regulations. The Reserve Bank of India instructed the Respondent/Bank and other financial institutions not to resort to fresh appointment in all cadres and banned appointments. Since the concerned workman was appointed through backdoor, he cannot claim permanency in service. Since, he was not appointed in accordance with rules and his engagement was only on the basis of need of the work, his disengagement from service cannot be construed to be retrenchment under the Act. Therefore, they pray that his claim may be dismissed with costs.

5. Again, the Petitioner Union in the rejoinder statement has contended as follows :—

The Respondent/Management after having engaged the services of the concerned workman cannot now turn around and say that his appointment is illegal and without any authority. On the other hand, the concerned employee was engaged continuously and was on regular nature of work. In reality, the Branch Managers have been provided with oral instructions to have their own temporary employees at branches. After having utilised and extracted work from the concerned workman, the Respondent/Bank is estopped from now contending that the said workman was not sponsored by Employment Exchange. The allegation that the concerned workman had availed a loan from the bank for the purchase of auto rickshaw will not in any way affect the concerned workman's claim because, it was purchased for the benefit of his brother since he was unemployed and the concerned workman is not earning any income from and out of the said auto rickshaw. Hence, Petitioner Union prays that an Award may be passed in their favour.

6. In these circumstances, the points for determination in this case are as follows :—

- (i) "whether the management of Indian Bank is justified in disengaging Sri T. Selvaraj, temporary sub-staff from the service of the bank ?"
- (ii) "to what relief the concerned workman is entitled?"

7. Point No. 1 :—

In this case, the contention of the Petitioner Union is that after having engaged the concerned workman Sri T. Selvaraj's services as sub-staff in the branch of the Respondent/Bank from 17-8-91, the Respondent cannot now contend that his engagement was not proper, not legal and so on. Further, it is the contention of the Petitioner Union that the concerned workman was engaged continuously and therefore, his services should regular in nature and not to meet the exigencies of the branch in any particular period as alleged by the Respondent. To substantiate their claim, on behalf of the Petitioner Union, five documents namely Ex. W1 to W5 were marked. In that Ex. W5 is the particulars of the temporary engagement of Sri T. Selvaraj at East Abhiramapuram branch of the Respondent/Bank. Ex. W3 is the copy of the transfer certificate of the concerned workman Sri T. Selvaraj and Ex. W4 is the copy of his Employment Exchange card. Ex. W1 and W2 are the Xerox copies of the dispute raised by the Petitioner Union before the Assistant Labour Commissioner (Central) and the reply filed by the Petitioner Union for the contention of the Respondent/Management.

8. On the other hand, the Respondent/Management contended that it is false to allege that Sri T. Selvaraj was engaged as a temporary sub-staff from 17-8-91 at East Abhiramapuram branch of the Respondent/Bank, on the other hand, his engagement was on need basis and intermittently on casual basis. Further, his employment was only on day to day casual basis and that too by the Branch Manager without due permission and approval of the competent authority. It is the further contention of the Respondent/Management that the bank was maintaining a panel of temporary employees list who worked in the leave vacancies and the said Sri T. Selvaraj was never in the said panel. Further, it is contended on behalf of the Respondent/Bank that the Central Government under whose control, the Respondent/Bank is functioning has issued circulars to the effect that no person should be engaged irrespective of the capacity either permanent or temporary without having duly sponsored by the Employment Exchange and therefore, the initial appointment of Sri T. Selvaraj itself is illegal. For this, they have filed six documents which were marked as Ex. M1 to M6. Ex M1 and M3 are Government of India instruction issued on 30-9-78 and 16-8-1990 respectively. Ex. M5 is the Reserve Bank of India instructions issued on 26-6-1996.

Ex. M2 is the circular containing norms for engaging temporary sub-staff and Ex. M4 is the copy of the settlement entered into between the Respondent/Bank management and recognised union. It is the contention of the Respondent that an agreement was entered into between the Union and the Respondent/Bank on 6-7-1992 with regard to temporary or casual employees engaged in leave vacancies of sub-staff. It is further argued that the settlement pertains to such of those casual employees employed during the period between 1-1-1982 to 31-12-1989 as a one time measure and for a specific purpose and for a specific period of time and in this case Sri T. Selvaraj was never utilised as a casual employee during the said period and therefore, the concerned workman Sri T. Selvaraj is not entitled to be included in the list of temporary employees. It is further contended that the initial appointment of Sri T. Selvaraj itself was an unauthorised and without permission or approval of the higher authorities and therefore, his temporary appointment is by back door method and hence, he cannot be made permanent. For this, the Respondent/Management relied on 1999 II LLJ 1173 in the case of CALCUTTA TRAMWAYS COMPANY (1978) LTD. & ORS. Vs. RAMESH AND 17 OTHERS and another Authority reported in 2003 ILLJ 948 UNION OF INDIA Vs. LEKH RAJ AND OTHERS, wherein, it was observed that *"appointment to a permanent service must be made in terms of recruitment rules. For that purpose, there must existance of the vacancy. A person appointed through back door i.e. not in conformity with the rules could not claim permanency in service.....if the initial appointment was illegal on account of not following the procedure for appointment, the incumbent obtaining appointment without following the procedure cannot claim as a matter of right to be regularised."* Further, the respondent placed much reliance in the case reported in 1997 ILLJ 331 UNION OF INDIA Vs. BISHAMBER DUTT, wherein the Hon'ble Supreme Court has held that *"unless a person is appointment on regular basis according to rules after consideration of the claims on merits, there is no question of regularisation of his service."* Further, they have relied on the judgement of Hon'ble Supreme Court in the case of MADHYAMIK SIKSHA PARISHAD U.P. Vs. ANIL KUMAR MISHRA & OTHERS as reported in AIR 1994 SC 1638, wherein it is held that *".....there were, no sanctioned posts in existence to which they could be said to have been appointed. The assignment was on ad-hoc one which anticipatedly spent itself out. It is difficult to envisage for them the status of workmen on the analogy of provisions of Industrial Disputes Act, 1947 importing the incidents of completing of 240 days workthe completion of 240 days work does not under that law import the right to regularisation."* Therefore, it is argued on behalf of the Respondent that the Petitioner Sri T. Selvaraj has no claim for regularisation in the permanent post of the sub-staff vacancy.

9. On the other hand, on behalf of the Petitioner, it is contended that it is not correct to say that Sri T. Selvaraj was engaged intermittently and for need based situations, but he was engaged continuously and further, the Respondent/Bank having utilised the services of Sri T. Selvaraj for a long and continuous period they are now estopped from contending that Sri T. Selvaraj was not sponsored by the Employment Exchange or that he did not undergo the selection process as contemplated under the rules and regulations. It further contended that even after the so called circulars of the Govt. the bank has entered into settlement with the workmen as per the Industrial Disputes Act under Section 12(3) for the engagement of various sub-staff in the respondent/bank. Therefore, it is futile to contend that no temporary sub-staff can be regularised, who were not sponsored by the Employment Exchange.

10. Again, on behalf of the Respondent, it is contended that Sri T. Selvaraj had availed the loan from the Respondent Bank East Abhiramapuram branch to purchase an auto rickshaw and the same was granted to him and he was gainfully self-employed by himself plying the auto-rickshaw and they also produced Ex. M6 series to prove that the loan was availed by Sri T. Selvaraj.

11. But, on the other hand, on behalf of the Petitioner Union it is contended that though Sri Selvaraj had availed the loan for auto-rickshaw, the same was given to his brother, who was unemployed and therefore, the contention that Sri T. Selvaraj was gainfully employed is false. Further, the employment in the Respondent/Bank is only part-time and even assuming for an argument sake that the loan availed by Sri T. Selvaraj for the purchase of auto-rickshaw was used by him, it cannot be said that he was not employed during that period because it was not the contention of the Respondent/Bank that he has not attended the temporary work of the bank at the relevant period.

12. But, on consideration of the entire evidence in this case, I find much force in the contention of the Respondent/Bank because it is well settled that no person can be appointed to any post in a nationalised bank not being sponsored by Employment Exchange. Further, it is not the contention of Petitioner Union that any settlement was entered into between the Respondent/Bank management and the Petitioner Union with regard to this kind of temporary employment. Under such circumstances, it cannot be contended that temporary/casual appointment of Sri T. Selvaraj can be regularised by the Respondent / Bank. Further, the decisions relied on by the Respondent clearly envisaged that such temporary appointments are illegal and they cannot be regularised. Therefore, for the foregoing reasons, the concerned workman Sri T. Selvaraj who was the casual employee, has no right to claim as a permanent employee, though he worked for a long period

intermittently. Therefore, I find this point against the concerned workman Sri T. Selvaraj.

13. The next point to be decided in this case is to what relief the concerned workman is entitled ?

In view of my findings above, the concerned workman in this industrial dispute Sri T. Selvaraj is not entitled to claim any relief against the Respondent/Indian Bank. As such, the claim of the I Party/Union made on behalf of the concerned workman cannot be granted against the II Party/Indian Bank. No Costs.

14. Thus, the reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him; corrected and pronounced by me in the open court on this day the 3rd September, 2003).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

For the I Party/Claimant : WW1 Sri T. Selvaraj

For the II Party/Management : None

Documents Marked :—

For the I Party/Claimant :—

Ex	Date	Description
No.		

W1 25-09-1997 Xerox copy of the letter from Indian Bank Employees Union to Assistant Labour Commissioner (Central) Raising an Industrial dispute.

W2 30-07-1998 Xerox copy of the letter from Indian Bank Employees Union to Regional Labour Commissioner (Central), Chennai Regarding regularisation of concerned employee.

W3 Nil Xerox copy of the Transfer Certificate of concerned workman.

W4 Nil Xerox copy of the Employment Exchange registration card.

W5 Nil Xerox copy of the statement showing details of engagement of concerned workman date-wise and payment.

For the II Party/Management :—

Ex	Date	Description
No.		

M1 30-09-1978 Xerox copy of the letter from Ministry of Finance to All the Heads of Banks and Financial Institutions regarding Recruitment of sub-staff in public sector banks.

M2 04-03-1983 Xerox copy of the circular issued by Personnel Deptt. to all branches of

	Indian Bank regarding engagement of persons during leave vacancies of sub-staff.
M3 16-8-1990	Xerox copy of the letter from Ministry of Finance to All the Chief Executive of Banks regarding Recruitment and absorption of temporary sub-staff in public sector banks.
M4 6-7-1992	Xerox copy of the memorandum of settlement under Section 12(3) entered into between the Respondent/Management and Petitioner Union regarding persons engaged in leave vacancies of sub-staff.
M5 26-6-1996	Xerox copy of the letter issued by Reserve Bank of India to the Chairman, Indian Bank regarding Achievement of Capital adequacy ratio of 8 per cent.
M6 30-8-1990	Xerox copy of application and other details for autorickshaw loan.

नई दिल्ली, 24 सितम्बर, 2003

का० आ० 2980.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सिंडिकेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 25/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं० एल-12011/223/2001-आई० आर० (बी-II)]

सौ० गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2980.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 25/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Syndicate Bank and their workman, which was received by the Central Government on 23-9-2003.

[No. L-12011/223/2001-IR(B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
CHENNAI

Thursday, the 18th September, 2003

Present : K. JAYARAMAN

Presiding Officer

INDUSTRIAL DISPUTE NO. 25/2002

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of Syndicate Bank and their workmen).

BETWEEN

The President, : I Party/Claimant
Syndicate Bank Employees' Union, Chennai

AND

The Deputy General Manager : II Party/Management
Syndicate Bank, Zonal Office, Chennai

Appearance:

For the Workman : M/s. P. Manimeghalai & R. Gomathy, Advocates

For the Management : M/s. T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour vide Notification No. L-12011/223/2001-IR(B-II) dated 13-3-2002 has referred the following dispute to this Tribunal for adjudication :—

“Whether the punishment of compulsory retirement from service imposed upon Sri P. Prabhakar, Attender by the management of Syndicate Bank vide proceedings dated 30-5-2000 is justified and legal? If not, what relief the workman is entitled to?”

2. After the receipt of the reference, it was taken on file as I.D. No. 25/2002 and notices were issued to both sides and both sides entered appearance through their advocates and filed their respective Claim Statement and Counter Statement. In this case, no one was examined as a witness on either side. On the side of the Petitioner/Workman 3 documents are filed and marked as Ex. W1 to W3. On the side of the II Party/Management 10 documents are filed and marked as M1 to M10.

3. The contention of the Petitioner Union in the Claim Statement are briefly as follows :—

One Sri P. Prabhakar, the charge sheeted workman was working as Attender in the Respondent/Bank's branch, Regional Inspectorate, Chennai from 18-3-81. While working as such, he was issued with charge sheet dated 15-12-99 for some misconduct. The allegations against him are that (i) he habitually absented from duty without leave; (ii) irregularly attended the office; (iii) unauthorisedly absent for duty without intimation. The explanation given by the employee to the charge sheet

was not accepted and an enquiry was ordered and the Enquiry Officer on 20-4-2000 held that the charges were proved beyond doubt. Even the concerned workman's written submission to the Disciplinary Authority was of no avail and he was awarded with a punishment of compulsory retirement from service and the Appellate Authority also has not considered the submission made by the employee concerned and dismissed his appeal. The findings of the Enquiry Officer, Disciplinary Authority and the Appellate authority are perverse and bad for non-consideration of the submission of the workman. They should have shown some leniency towards the employee. Therefore, their findings are totally non-application of mind. Hence, the Petitioner Union prays for setting aside the order passed by the Respondent/Management and for a consequential relief.

4. As against this, the Respondent/Management in their Counter Statement contended that as per the terms of employment, the employee is entitled for 12 days casual leave for every year and privilege leave @ 1 day for 11 days of active service and he further entitled to sick leave of 540 days for the entire service @ 30 days per year on half pay basis and beyond 24 years of service, he is entitled for one month additional sick leave for each completed year on half pay basis. Apart from this, he is also entitled to extraordinary leave on loss of pay for 360 days during the entire service. The concerned sub-staff Sri P. Prabhakar even though joined the Respondent/Bank in the year 1981, he was highly irregular in his attendance and his total unauthorised absence upto 1999 was of the order of 888 days. He was given two warnings, one punishment of stoppage of increment for six months and a punishment of reduction of his basic pay by two stages for the misconduct namely unauthorised absence and also for irregular attendance. The concerned workman was a chronic absentee. Under such circumstances, it cannot be said that the punishment of compulsory retirement after due enquiry is disproportionate to the charges framed against him. Hence, the management prays that the claim of the Petitioner Union may be dismissed with costs.

5. In these circumstances, the points for determination in this case are :—

- (i) "Whether the punishment of compulsory retirement awarded to Sri P. Prabhakar by the Respondent/Management is justified?"
- (ii) "To what relief, the concerned workman is entitled?"

6. Point No. 1 :—

In this case, the Petitioner Union, espousing the cause of the concerned employee Sri P. Prabhakar has not disputed the enquiry proceedings. But, on the other hand, the grievance of the concerned workman is only that his submissions before the Disciplinary Authority and also before the Appellate Authority have not been considered and it amounts only non-application of mind by both the authorities and therefore, their orders are bad in law.

7. On behalf of the Petitioner, it is contended that the concerned employee was suffering from skin disease and as a result of which he was forced to avail leave and if he did attend the office in such a condition, it would not only have been difficult for him to attend the office work but also posed a health hazard to his other colleagues in office. Therefore, he has taken such leave and this aspect was not considered by the Disciplinary Authority and also by the Appellate Authority.

8. But, on the other hand, on behalf of the Respondent/ Management, it is argued that the concerned employee was highly irregular in his attendance, even in 1986 he was unauthorisedly absented for 31 days, in 1987 he absented for duty for 59 days on fourteen occasions and his total extraordinary leave on loss of pay was for 360 days and his unauthorised absence was 95 days during that period and he was given a punishment of warning and again during 1994, he was given a punishment of warning for his unauthorised absence and during 1997, his unauthorised absence was more than 170 days and therefore, he was awarded with a punishment of stoppage of one increment for six months. In the year 1998, apart from frequent absence, without leave for 48 days, he remained unauthorisedly absent continuously for 71 days and therefore, disciplinary enquiry was conducted and a punishment of reduction in his basic pay by two stages was awarded and even after that he has not changed his attitude and in the year 1999, he absented for duty without leave for 82 days on six occasions and his total unauthorised absence up to 27-11-1999 was more than 888 days and therefore, the Respondent/Management has taken disciplinary proceedings and framed charges and upon finding that he was guilty of charges, the Disciplinary Authority imposed the punishment of compulsory retirement and therefore, it cannot be said that this punishment imposed on the concerned workman is harsh. It is his further contention that even after issuance of charge sheet, the concerned employee was unauthorisedly absent for 37 days between December, 1999 and 1st April, 2000, and therefore, the employee was a chronic absentee and it cannot be said that the punishment of compulsory retirement was disproportionate to the charges framed against him. On behalf of the Respondent/ Management 10 documents were marked out of which Ex. M1 to M9 are related to disciplinary proceedings and the tenth document is with regard to pension payable to the concerned workman after his compulsory retirement. The learned counsel for the Respondent argued that the punishment awarded to the concerned employee cannot be said as harsh or disproportionate to the gravity of the charges framed against him and even after the retirement, the Petitioner is entitled to all the retirement benefits and he is getting Rs. 1,129 as monthly pension. Further, on the side of the Respondent/ Management three decisions were relied on. The first decision is in the case of RATNAKAR SAMUEL GAIKWAD Vs. J.G. GLASS INDUSTRIES LTD., PUNE AND ANOTHER reported in 2002 LLR 451. The 2nd authority is reported in 2002

LLR 220 in the case of P.M. RAJU Vs. PRESIDING OFFICER, LABOUR COURT MADURAI AND ANOTHER AND THE 3RD RULING IS REPORTED IN1998 (1) LLN 710 IN THE CASE OF ANNA TRANSPORT CORPORATION Vs. LABOUR COURT, SALEM AND ANOTHER. In the first ruling cited by the learned counsel for the Respondent/Management, the High court of Bombay in a similar case has held that "it would be travesty of justice to saddle the employer with the service of workman who has been remaining absent habitually and has been issued 35 memos from the time of appointment till his services were terminated." In the second ruling the Madras High Court has held in a similar situation that "as stated above and also as seen from the past records, as adverted to, in the award of Labour Court, it cannot be considered that the Petitioner is a person not habitually absenting himself from duty inspite of imposition of minor punishments of five earlier occasions and inspite of issuance of charge memo. The Labour Court finds as a matter of fact the Petitioner is guilty of unauthorised and unjustified absence. Such a finding of fact, cannot be easily brushed aside or interfered with particularly in the facts and circumstances of the case." In the third case, the Madras High Court, while dealing with Section 11A of the Industrial Disputes Act, 1947 has held that the employer is not required to function as a charity organisation. Any organisation is established to render efficient service and to fulfil the object for which it has been set up. further if its, personnel stay away from work frequently and for long periods, no organisation can retain them in employment. The discretion under section 11A is not meant to be equated to charity. That is not the object of Section 11A of the Industrial Disputes Act."

9. But, again on the side of the Petitioner, it is argued that though the Petitioner was absent from duty, its only because of his skin disease and this aspect has not been considered by the authorities and in a welfare country like India, this aspect must be considered, while awarding the punishment through domestic enquiry.

10. But, on consideration of the entire evidence and documents in this case, I find that the concerned employee was a chronic absentee and though he has stated that his absence was only due to skin disease, his absence was abnormal and no organisation can run effectively with such a sub-staff. Therefore, I find that the punishment awarded to the concerned workman Sri P.Prabhakar, by the Respondent/Management Syndicate Bank is justified. As such, I find this point in affirmative.

11. Point No. 2 :—

The next point to be decided in this case is to what relief the concerned workman is entitled ?

In view of my force going findings that the punishment awarded by the Respondent/Management to the concerned workman Sri. P. Prabhakar is justified, I find this issue against the Petitioner Union. As such, the concerned workman Sri P. Prabhakar is not entitled to any relief.

12. The reference is, thus answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 18th September, 2003.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents : Marked

For the I Party/Workman :

Ex. No.	Date	Description
W1	18-12-99	Xerox copy of the letter from the concerned Workman to the Disciplinary Authority requesting him to drop the proceedings.
W2	08-05-2000	Xerox copy of the letter from the concerned Workman to the Disciplinary Authority requesting him to drop the proceedings.
W3	17-06-2000	Xerox copy of the letter from the concerned Workman to the Appellate Authority against the order of punishment.

For the II Party/Management :—

Ex. No.	Date	Description
M1	15-12-99	Xerox copy of the charge sheet issued to concerned workman
M2	18-12-99	Xerox copy of the reply submitted by concerned workman to the charge sheet
M3 series	22-01-2000	Xerox copy of the enquiry proceedings & others
M4	20-04-2000	Xerox copy of the enquiry findings
M5	08-05-2000	Xerox copy of the letter from concerned workman to Disciplinary Authority
M6	15-05-2000	Xerox copy of the show cause notice issued by Disciplinary Authority to concerned workman proposing to impose the order of punishment.
M7	23-05-2000	Xerox copy of the minutes of personal hearing before the Disciplinary Authority
M8	30-05-2000	Xerox copy of the final order of the Disciplinary Authority
M9	18-08-2000	Xerox copy of the letter of Chief Manager of Respondent/Bank Head Office to the concerned workman enclosing the order of Appellate Authority
M10	Nil	Xerox copy of the statement of pension payable to concerned workman.

नई दिल्ली, 24 सितम्बर, 2003

का.आ. 2981.——औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार केनरा बैंक के प्रबंध धर्ता के संबंद्ह नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण/श्रम मंत्रालय, चेन्नई के पंचाट (संदर्भ संख्या 44/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/12/2002-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S.O. 2981.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.44/2002) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the management of Canara Bank and their workmen, which was received by the Central Government on 23-9-2003.

[No. L-12012/12/2002-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Monday, the 15th September, 2003

PRESENT : K. JAYARAMAN
Presiding Officer

INDUSTRIAL DISPUTE NO. 44/2002

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Canara Bank and their workman Sri P. Kalaimani)

Between

Sri P. Kalaimani : I Party/Workman

AND

The Deputy General Manager : II Party/Management
Canara Bank, Madurai

Appearance :

For the Workman : M/s. K. V. Ananthakrishnan,
V. Chandrasekar &
K. P. Muralidharan, Advocates

For the Management : Mr. T. R. Sathiyamohan
Advocate

AWARD

The Central Government, Ministry of Labour *vide* Notification Order No. L-12012/12/2002-IR (B-II) dated 29-4-2002 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the management of Canara Bank in imposing punishment of compulsory retirement from service of Sri P. Kalaimani *vide* order dated 30-8-1997 is legal and justified ? If not, what relief the concerned workman is entitled to ?”

2. After the receipt of the reference, it was taken on file as I.D. No. 44/2002 and notices were issued to both the parties and both the parties entered appearance through their advocates and filed their respective Claim Statement and Counter Statement. In this case, no one has been examined as a witness on either side. No. document has been marked on the side of the Petitioner/Workman. 16 documents file on the side of the II Party/Management were marked as M1 to M16.

3. The allegations of the Petitioner in the Claim Statement are briefly as follows :—

The Petitioner Shri P. Kalaimani joined the Respondent/Bank as sub-staff on 15-2-1984. While he was working at Tisaiyanvilai Branch, the Respondent/Bank issued charge sheet dated 7-5-1996 containing two charges alleging certain acts of misconducts. The Petitioner submitted his explanation to the charge sheet denying the charges levelled against him. The Respondent/Bank conducted as enquiry. Based on the Enquiry Officer's findings, the Disciplinary Authority has proposed the punishment of dismissal and asked the Petitioner to attend personal hearing. After the personal hearing, the Disciplinary Authority has imposed the punishment of compulsory retirement from service by his order dated 30-8-97. The Petitioner preferred as appeal against that order to the General Manager. The Appellate Authority has merely confirmed the order of the Disciplinary Authority without proper application of his mind. The Petitioner was a Tappal Peon and it was his duty to post the Registered covers given to him by Tappal Clerk and to handover the registration slips given to him to the Tappal Clerk. The alleged cheques were discounted by the officials of the Respondent/Bank in discriminatory and did not take efforts to realize the same. The bank officials detained the instruments so discounted without posting them in the discretionary advance register and are responsible for the serious lapses and in order to escape from the misconduct, they shifted the blame on the Tappal Peon namely the Petitioner. Therefore, there is no basis to allege that the Petitioner had detained the cheques in collusion with one Sri S. Namasivayam. Further, in order to cover up the irregularities committed by the officials of the Respondent/Bank, the Petitioner was made a scapegoat, instead of

proceed against the erring officials for their fraudulent acts, the Respondent/Bank simply put the blame on the sub-staff who has no part to play in the irregularities committed by the officials and was charge sheeted for those irregularities and a major punishment of compulsory retirement was imposed. Both the Disciplinary Authority and Appellate Authority have conveniently omitted the irregularities and fraud committed by the officers of the bank and imposed the punishment against the Petitioner. Therefore, the finding of the Enquiry Officer is illegal, perverse and against the evidence on record and hence, the same is liable to be set aside. Therefore, the Petitioner prays that an Award may be passed in his favour.

4. As against this, the Respondent/Bank contended in the Counter Statement that the Petitioner's acts have caused wilful damage to the property of the bank which is highly prejudicial to the interest of the bank and as the same amounts to gross misconduct under Chapter XI regulation 3, Clause (i) and (m) of the Canara Bank Service Code, the Petitioner was suspended from service and charge sheeted and upon enquiry, he was compulsorily retired from service. The enquiry was conducted fully in conformity with the principles of natural justice and the Petitioner was given full opportunity to defend the charges by due assistance of a co-worker and after the findings of the Enquiry Officer, it was forwarded to the Petitioner for his explanation and on receipt of his submission on the findings, the Disciplinary Authority after hearing the Petitioner passed an order of compulsory retirement on 30-8-1997. Even the Petitioner's appeal has been disposed of on merits and it is false to allege that the Appellate Authority has not applied his mind in coming to that conclusion. The Petitioner has apparently colluded with Sri S. Namasivayam, Clerk of the Respondent/Bank branch purposefully and deliberately delayed the sending of cover by registered post and therefore, it is false to allege that he has no play in these acts. It is clearly proved during the enquiry that the Petitioner has failed to deliver the postal receipts for having dispatched the covers containing CDBs as per the instructions and it was with an ulterior motive. The charge levelled against the Petitioner has been clearly established and proved and therefore, the punishment of compulsory retirement is commensurate with the gravity of the charges framed against him and this claim is to be rejected with costs.

5. In these circumstances, the points to be decided in this case are—

- (i) "Whether the action of the management of Canara Bank in imposing the punishment of compulsory retirement from service on Sri P. Kalaimani vide order dated 30-8-1997 is legal and justified?"
- (ii) "To what relief, the concerned workman is entitled?"

6. Point No. 1:—

In this case, the allegations against the Petitioner by the Respondent/Bank are—that while the Petitioner was working in Tappal section at Tisaiyanvilai Branch of the Respondent/Bank, he has detained the cheque discounted to Sri S. Namasivayam, Clerk of the same branch under CDB 3538 on 19-7-95 without sending it by Registered Post to Canara Bank Kuzhithurai branch for collection in collusion with the said Sri S. Namasivayam, secondly, the Petitioner detained the cheque discounted on 31-5-95 to his friend one Sri Esakiappan for Rs. 20,000 under CDB 3399 in collusion with Sri S. Namasivayam, the same Clerk with ulterior motive, thirdly, he detained the cheque discounted on 14-7-95 to his friend Sri T.P. Ganesan for Rs. 49,370 CDB 3517 without sending it to drawee bank, Indian Overseas Bank, Kuttam by registered post and fourthly that the Petitioner has colluded with Sri S. Namasivayam, Clerk and handed over the cheque book bearing No. K997701 to K 997710 of Sri B. Arumugam, NRE S. B. account holder to Sri S. Namasivayam without sending it to the customer by registered post. Therefore, we have to find whether the charges framed against the Petitioner/Workman had been established and proved to the satisfaction of the Disciplinary Authority.

7. On behalf of the Petitioner, it was contended that in this case, there is no direct evidence to hold that the Petitioner has detained the three cheques which were discounted in the Respondent/Bank branch at Tisaiyanvilai and further there is no clear proof that the NRE account cheque book has been handed over to Sri S. Namasivayam, Clerk in the same branch by the Petitioner. On the other hand, the officers who have discounted the cheques more than their limits without posting it in the discretionary advance register and without getting ratification from the higher officers and in order to escape from their misconduct, they shifted the blame on the Tappal Peon, the Petitioner herein, who has no role in these acts. It is further contended that the Petitioner Sri P. Kalaimani was only a Tappal Peon and his duty is to post the registered cover given to him by the Tappal Clerk and hand over the registration slips given to him by the postal authorities to the Tappal Clerk and therefore, only in order to escape from their liabilities and only in order to cover up their irregularities committed by the officials of the Respondent/Bank Tisaiyanvilai, the Petitioner was made a scapegoat and a flimsy enquiry was conducted against him and without following any procedures, the Disciplinary Authority has given an illegal order and the Appellate Authority has also approved the same.

8. But, as against this, the learned counsel for the Respondent contended that even in his Claim Statement, the Petitioner has admitted the cheque drawn on State Bank of India Kuzhithurai branch CDB 3538 was sent by registered post on 20-7-1995 and on that date, the Petitioner

has posted the registered cover and handed over the registration slip to the Tappal Clerk and therefore, the allegation that the Petitioner did not despatch the registered cover handed over to him on 20-7-1995 is false and baseless. On the other hand, it is clearly established during the enquiry that there is no registration slip in the Tappal Book on the date of 20-7-1995 which was alleged to be sent to Kuzhithurai branch and therefore, it is clearly proved that the Petitioner Sri P. Kalaimani in collusion with the said Mr. S. Namisivayam has purposefully detained the discounted cheque with an ulterior motive. Further, it is the allegation of the Respondent that in order to help his friend Mr. T. P. Ganesan, Proprietor of M/s. Jaya Ganesh Stores, Tirunelveli, for discounting a cheque for Rs. 49,370 and since there was no sufficient balance in the drawer's account, the Petitioner did not send the cheque to Indian Overseas Bank, Kuttam, drawee bank and detained the cheque thus committed a grave misconduct. Similarly, on 9-3-1995 one NRE S. B. account cheque book was sent to the account holder by registered air-mail and it has come to light that the above cheque book was in possession of Sri S. Namisivayam and the Petitioner has colluded with Sri S. Namisivayam and handed over the cheque book to Sri S. Namisivayam without sending it to the customer by registered post. Therefore, though there is no direct evidence in this case, the evidence of the Branch Manager and Tappal Clerk and the circumstantial evidence shown clearly established that the Petitioner in collusion with Sri S. Namisivayam has done all the misdeeds and therefore, the punishment imposed on the Petitioner is proper and just.

9. But, on behalf of the Petitioner, it is contended that even though it is admitted that there is no direct evidence against the Petitioner, the alleged circumstantial evidence and evidences of officers are not trustworthy and the officers, who have given evidence against the Petitioner are only responsible for all the misdeeds and it was the clear evidence of the officers that the Respondent bank branch at Tisaiyanvilai has power to discount the cheque to individual parties for genuine trade transaction only up to Rs. 50,000. On the other hand, all the cheques discounted as shown in the enquiry are of more than Rs. 50,000 and it was clearly admitted that no sanction was obtained from the higher officers nor any ratification was sought from the authorities and only to escape from their liabilities and only to cover up the irregularities committed by them, they have made the Petitioner as scapegoat. Further, though there is an admission that on 20-7-1995 that the Petitioner has posted the registered cover and handed over the registration slip to Tappal Clerk, there is no direct evidence that the letter to Kuzhithurai branch was handed over to him by the Tappal Clerk. Only to save his position, the Petitioner has averred in the Claim Statement that what were given to him will be posted and registration slip which have been handed over to the Tappal Clerk, it was stated like that. Further, it is the clear evidence

of the Respondent that all the slips were with the branch office but neither during the enquiry nor before this Court, they have produced the Tappal Book with registration slips and further it was admitted by the Clerk, who was looking after the Tappal Register, that the registration slips were available with the bank and it was not posted in the Tappal Book and under such circumstances, the burden of proving the fact that the registration slips which were available with the bank were not related to the alleged transaction lies on the Respondent/Management but it was not discharged. It is the further contention of the Petitioner side that the NRE account holder's cheque book was sent to the account holder namely Sri B. Arumugam and it was returned to the Respondent/Bank and kept in the chest for more than ten days and therefore, under such circumstances, the Petitioner can do nothing to hand over the same to Sri S. Namisivayam, Clerk of the Respondent/Bank.

10. On consideration of the material records and the rival contentions, I find much force in the contention of the Petitioner side because, there is no direct evidence to show that the Petitioner has detained the cheques discounted with the Respondent/Bank branch at Tisaiyanvilai. Further, it is not proved that the discounted cheques were handed over to the Petitioner for posting it to the drawee bank branch. Under such circumstances, it is clear that only to escape from the liabilities and in order to escape from the irregularities committed by the officials of the branch, the Petitioner was made as a scapegoat. Further, it is not shown that the past conduct of the Petitioner was so bad that he has made these misdeeds as routine one. It is clearly established that the Petitioner has served more than 13 years in the Respondent/Bank branch and it was not shown that he has been punished earlier for any misconduct. It is also clearly stated that the said Mr. Sri S. Namisivayam, Clerk of the Respondent has done all the misdeeds and he has been punished for his misdeeds. As already stated, it is clearly proved from the enquiry report that the Accountant and the other officials of the Respondent/Bank branch have misused their power, namely, cheque discount power to the individual parties and without any sanction and without any ratification, they have sanctioned more than Rs. 75,000 and Rs. 90,000 to the individuals and further, it is clearly established that these amounts have not been collected even for a long time and only to escape from the irregularities, they have shown the Petitioner is responsible for the delay in sending the cheques to the drawee branch. When it was not proved that the registered tappals have been handed over to the Petitioner and the Petitioner has detained all these Tappals, it cannot be said that the Petitioner is responsible for the alleged occurrence during that period. It is further established before this Court that the relevant records have not been placed before the enquiry even after due requisition given to the Enquiry Officer.

11. Under such circumstances, I come to the conclusion that the action of the II Party/Management Canara Bank in imposing the given punishment of compulsory retirement from service on Sri P. Kalaimani, the Petitioner herein, is not legal and justified. As such, I find this point in favour of the Petitioner/Workman.

12. Point No. 2 :—

The next point to be decided in this industrial dispute is to what relief the Petitioner/Workman is entitled ?

In view of my finding that the punishment given by the II Party/Respondent Canara Bank is not just, the Petitioner/Workman Sri P. Kalaimani is to be reinstated in service. The Petitioner Sri P. Kalaimani was compulsorily retired on 30-8-1997 and therefore, I find that the Petitioner Sri P. Kalaimani is entitled to only 50% (Fifty per cent) of the back wages. In these circumstances, I find there must be continuity of service of the Petitioner/Workman in the Respondent/Bank. Ordered accordingly. No Costs.

13. Thus, the issue is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 15th September, 2003).

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Workman : Nil

For the II Party/Management :

Ex.No.	Date	Description
M1	07-05-96	Xerox copy of the charge sheet issued to Petitioner.
M2	25-06-96	Xerox copy of the letter from Petitioner. to Deputy General Manager.
M3	Nil	Xerox copy of the enquiry proceedings.
M4	05-04-97	Xerox copy of the findings of Enquiry Officer.
M5	29-05-97	Xerox copy of the brief submitted by Defence representative in reply to findings of Enquiry Officer.
M6	11-08-97	Xerox copy of the proceedings of Disciplinary Authority against the Petitioner.
M7	10-09-97	Xerox copy of the order of Dy. General Manager Against the Petitioner imposing punishment of Compulsory retirement.

M8	04-03-99	Xerox copy of the order of Appellate Authority.
M9	11-03-99	Xerox copy of the proceedings of Deputy General Manager forwarding the order of Appellate Authority to Petitioner.
M10	Nil	Xerox copy of the investigation report of Sri V. Nallasivam.
M11	09-01-96	Xerox copy of the statement of Sri E. Selvaraj.
M12	Nil	Xerox copy of the Tapal book register.
M13	Nil	Xerox copy of the cheque book issue register.
M14	Nil	Xerox copy of the S.B. ledger sheets pertaining to NRE account No. 15110.
M15	20-01-96	Xerox copy of the statement of G. Balusamy, then Senior Manager.
M16	Nil	Extract of S.B. account ledger in respect of Account No. 15110.

नई दिल्ली, 24 सितम्बर, 2003

का.आ. 2982.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मद्रास पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में ऑद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 31/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल.-33012/6/88-डी-III (बी)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 24th September, 2003

S.O. 2982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.31/89) of the Industrial Tribunal, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Madras Port Trust and their workmen, which was received by the Central Government on 23-9-2003.

[No. L-33012/6/88-D-III (B)]

C. GANGADHARAN, Under Secy.

ANNEXURE

BEFORE THE INDUSTRIAL TRIBUNAL TAMIL NADU, CHENNAI-104

Tuesday, the 26th day of August, 2003

PRESENT :

THIRU V. K. THIRUNAVUKKARASU, B.Com.B.L.,

INDUSTRIAL TRIBUNAL

INDUSTRIAL DISPUTE NO. 31 OF 1989

(In the matter of the dispute for adjudication under Section 10(1)(d) of the Industrial Disputes Act, 1947, between the Workman and the Management of Madras Port Trust, Madras-600001)

Between

The Workman

Present Address
Thiru K.N. Chinnappan,
C/o S. Raveendran,
Advocate
I, High Court Chambers,
High Court, Chennai-600104

AND

The Chairman,
Madras Port Trust,
Rajaji Salai,
Madras-600001

Reference : Order No.L. 33012/6/88-D-III(B) dated 13-3-1989, Ministry of Labour, Govt. of India, New Delhi.

This dispute after remand coming on for final hearing on Thursday, the 14th day of August, 2003, upon perusing the reference, Claim and counter statements and all other material papers on record and upon hearing the arguments of Thiru S. Ravindran, advocate appearing for the workman and of Thiru R. Arumugam, advocate appearing for the Management, and this dispute having stood over till this day for consideration, this Tribunal made the following :

AWARD

The Govt. of India has referred the following issue for adjudication by this Tribunal:

“Whether the action of the Management of Madras Port Trust in dismissing the service of Sri K. N. Chinnappan, Fitter Grade III w.e.f. 14-7-1987 is justified? If not, what relief is he entitled to?”

2. The main averments found in the Claim statement of the Petitioner are as follows:

The petitioner entered the service of the Madras Port Trust on 1-8-1981 as Fitter Grade III (Pipeline) in the E & M Department, and the petitioner has been working to the satisfaction of his superiors without any blemish. Never had any adverse remark been made against the petitioner. While so, on 16-1-1987 a Charge Memo was served on the petitioner for which he gave his explanation on 10-1-1987. The enquiry commenced on 3-3-1987, and after the enquiry was over on that day, at about 8.30 p.m. the enquiry officer took the petitioner along with A. Duraisamy (Assistant Engineer) (M) and Kuppusamy, on

whose complaint the above charge was framed, to the place where the petitioner was residing to make a search of the premises in order to seize incriminating documents, if any, which may be used against him in enquiry. The defence counsel Shri Raghavan, took serious objection to the search being conducted. As the search conducted by the enquiry officer was illegal, a complaint was given to the Commissioner of Police by one Ekambaram, with whom the petitioner was residing. The petitioner also lodged an objection with the chairman, Port Trust on 5-3-1987, but, no action was taken on the same, and the enquiry was continued. Before the Charge Memo was served on the Petitioner the Vigilance Officer, Madras Port Trust obtained from him, under duress, a statement which the Vigilance Officer himself dictated with a view to implicate the petitioner. On 24-1-1987 the petitioner caused a notice to be issued through his advocate, taking exception to the statement obtained under duress from the petitioner by the Vigilance Officer for which there was no reply. The charge framed against the petitioner (dated 16-1-1987) reads as follows:

“That Shri K.N. Chinnappan, T. No. 5055, Fitter Gr. III (PL) has accepted in his letter dated 16-1-1987 that he indulged in the act of collecting money from Sri T. Radhakrishnan, T. No. 712, V. Munirathnam, T. No. 703, M. Kuppuswamy, T. No. 732, and L. Jayaraj, T. No. 1975, Mechanists (HS) Gr. II in an illegal manner, the act of which is punishable under clause 42C (III) of the Standing Orders for the Port of Madras read with the proviso thereof.”

Clause 42(iii) of the Standing orders for the Port of Madras provides for suspension and dismissal, for taking or giving bribe or any illegal gratification whatsoever. According to the Charge memo, the petitioner collected money in illegal manner from persons who are employees of the Port Trust. But, no departmental enquiry has been instituted against them. The action taken against the petitioner was to victimise him. The petitioner cannot be singled out for a discriminatory treatment. By creating conditions in which the defence counsel would not continue to represent the petitioner in the enquiry, a reasonable opportunity to defend has been denied to the petitioner. This is against the principles of natural justice. The findings of the enquiry officer is based on the confessional statement and the same is untenable. Mr. Balasubramaniam was examined as a witness in the enquiry. At the outset he denied knowledge of the receipt of illegal gratification of Rs. 5000 by the petitioner. As the answers given by said Balasubramaniam were not to the liking of the enquiry officer, he threatened the said Balasubramaniam, who started deposing against the petitioner thereafter. The enquiry officer recorded that the earlier part of the evidence given by Balasubramaniam denying knowledge of the receipt of the illegal gratification

would be treated as cancelled at his request. Such action on the part of the Enquiry Officer was grossly illegal and would militate against the principles governing the conduct of departmental enquiries. This vitiated the entire enquiry against the petitioner. The enquiry concluded on 11-6-1987 and the Enquiry Officer gave his findings. After issuing a show cause notice, the petitioner was given a personal hearing on 14-7-1987. On the same day the Chief Mechanical Engineer discharged the petitioner from Madras Port Trust services w.e.f. 14-7-1987 A. N. The petitioner preferred an appeal to the Chairman, Madras Port Trust on 16-9-87 drawing his attention to all the lapses in the conduct of the enquiry and praying to set aside the order of discharge. The appeal was disposed of on 16-11-87 with the observation that there was no reason to interfere with the order of discharge. Therefore, the discharge of the petitioner from the service may be held as not justified, and an award may be passed for reinstating the petitioner to service with back wages, continuity of service, and other benefits.

3. The main averments found in the Counter statement of the Respondent are as follows:

The respondent received a written complaint from T. G. Radhakrishnan, Munirathnam, Kuppuswamy and Jayaraj, the workers of the Port Trust stating that the petitioner collected Rs. 5000/- from each of them promising to get a job to their respective sons, that he had returned the sum of Rs. 4700/- to Munirathnam, and promised to return the money to others. On this, the Vigilance Officer made an enquiry on 16-1-87, and the petitioner voluntarily gave a statement admitting collection of money from them on the promise to secure job to the sons of the workers. Therefore, the respondent initiated disciplinary action. A charge was framed against the petitioner. The petitioner submitted his explanation on 19-1-87 denying the charges. In the enquiry, the petitioner was permitted to be defended by co-worker K. S. Raghavan, as desired by the petitioner. The enquiry commenced on 3-3-1987. Raghavan stated that he was not willing to continue as defence counsel and withdraw voluntarily. In the enquiry full opportunity was given to the petitioner. The Enquiry Officer based on the evidence and the documents, rightly concluded that the charge against the petitioner that he received Rs. 5000/- each from Sri Radhakrishnan, Munirathnam, Kuppuswamy on different dates between 13-9-86 and 20-10-86 on the pretext of getting apprenticeship (sports quota) to their sons was proved. To the Second show cause his notice, the petitioner submitted his explanation on 20-6-1987. The petitioner was also given a personal hearing on 14-7-1987. After taking into consideration his past record of service, and gravity of the charge proved. The respondent issued an order dated 14-7-1987 discharging him from service. It is incorrect to state that the petitioner's career had been an unblemished one, whereas, he was punished several times. The petitioner

never objected to the continuance of the enquiry by the same enquiry officer. Therefore the objection regarding the search made is irrelevant. Incriminating documents were seized as a result of such search. It is incorrect to state that the Vigilance Officer obtained a statement from the petitioner under duress. The petitioner gave the statement voluntarily, and no immediate protest was made by him. The lawyer notice was given only on 24-1-1987, while the disciplinary action has already been initiated. The employees who gave bribe have also been charge sheeted and disciplinary action was initiated against them. The allegations that there was no basis for the charge, that action has been taken to victimise the petitioner, that he has been singled out for discriminatory treatment are denied. The respondent had not created the conditions for the withdrawal of petitioner's defence representative. It is incorrect to state that the finding of the enquiry officer are based on the concessional statements. The allegation that the answers given by Balasubramaniam were not to the liking of the Enquiry Officer and that the Enquiry Officer threatened Balasubramaniam are all denied. The Enquiry Officer recorded the proceedings correctly, and no objection was taken by the petitioner at the enquiry. The petitioner did not even cross-examine Balasubramaniam. In the event of this Tribunal coming to the conclusion that the enquiry conducted against the petitioner is not fair and proper and/or the findings of the Enquiry Officer are perverse, opportunity may be granted to the respondent to lead fresh evidence to justify the impugned order and punishment. The respondent prays to dismiss the claim of the petitioner.

4. On behalf of petitioner/workman, WW1 Thiru K. N. Chinnappan was examined and no document was marked. On behalf of the Respondent/management, MW1 Th. G. Radhakrishnan, MW2 Thiru V. Munirathnam, MW3 Th. M. Kuppusamy and MW4 Thiru L. Jayaraj, have been examined and Exs. M1 to M16 were marked.

5. The Point for consideration is whether the action of the Management of Madras Port Trust in dismissing the services of Sri K.N. Chinnappan, Fitter Gr. III w.e.f. 14-7-1987 is justified? If not what relief is he entitled to?

6. The Point: The Petitioner was appointed by the Respondent on 1-8-1981 as Fitter Gr. III. Ex. M1 dt. 16-1-1987 is the letter sent by the Petitioner to the Vigilance Officer of the respondent. Ex. M2 dt. 16-1-1987 is the copy of the Charge Memo issued by the respondent to the petitioner/ workman. Ex. M3 dt. 19-1-1987 is the letter from the petitioner. Ex. M4 dt. 24-1-1987 is the Memo issued to the petitioner. On 24-1-1987 under Ex. M5, the petitioner issued lawyer's notice to the respondent. On 4-2-1987 under Ex. M6, the petitioner has given an explanation. Ex. M7 is the Extract from the Note file. Ex. M8 dt. 5-3-1987 is the letter sent by the petitioner to the respondent. Ex. M9 is the copy of the enquiry proceedings. Ex. M10 dt. 6-4-1997 is the petitioner's final Written Statement. Ex. M11 dt. 26-5-1988 is the letter of the

petitioner's wife to the management. Ex. M12 is the letter of the petitioner to the Free Legal Aid Centre. Ex. M13 dated 3-6-1988 is the letter sent by the petitioner to the respondent. Ex. M14 dt. 1-7-88 is the Lawyer's notice issued by the petitioner. Ex. M15 is the findings of the Enquiry Officer. Ex. M16 is the Complaint given by four workers against the petitioner.

7. On 14-7-1987, the petitioner was discharged from the service of Madras Port Trust. Against that order, the petitioner preferred an appeal. The appeal was finally disposed on 16-11-1987.

8. By an Award dated 31-3-1985, this Tribunal rejected the Claim of the workman which award was set aside by the Hon'ble High Court in W.P.No. 2330/96 on 23-2-99. The matter was remanded back to this Tribunal, to let in further evidence if any and this Tribunal was directed to dispose of the dispute before 30-9-99. After the remand, the petitioner workman examined himself as WW1 and no other additional evidence was let in by the respondent management.

9. The Hon'ble High Court passed an Order dated 3-3-2003 in W.P. No. 16990 of 2000 and W.P.M.P.Nos. 24526 & 27007 of 2000, and W.P.M.P. No. 4602 of 2002 as follows:

"In the circumstances, this Writ Petition is allowed and the award of the first respondent Tribunal impugned in this Writ Petition is quashed and the matter is remitted back to the Tribunal for considering both oral and documentary evidence. No liberty is given to let in any further evidence. The Tribunal shall give priority to this matter as it is a very old industrial dispute. The parties shall bear their respective costs. Consequently, connected Miscellaneous Petitions are closed."

10. The Enquiry Officer's findings was marked as Ex. M15. The Enquiry Officer would say that on 3-3-1987, he and the Presenting Officer visited the house of the workman. The Enquiry Officer has further stated that the workman opened three suit cases from one of which a bank pass-book was taken and that certain documents were also found. It shown that the Enquiry Officer had made a search of a workman along with the Presenting Officer. He has not stated that the workman or his representative also accompanied with them. The learned counsel for the management has not been able to point out any authority under which the Enquiry Officer searched the house of the workman in the course of Domestic enquiry.

11. The learned counsel for the workman submits that the act of the enquiry officer and Presiding Officer is hostile and biased and it goes to vitiate the enquiry conducted by the Enquiry Officer. On the side of the management, one Balasubramaniam was examined as a witness. Initially the said Balasubramaniam did not support

the case of the management. The learned counsel for the workman submit that the Enquiry Officer threatened the witness Balasubramaniam and made him to give evidence to the liking of Management. The said Balasubramaniam was examined on 6-3-1987. He was asked to say whether he knew anything about the incident of Rs. 5000/- received by the workman from the four employees. Initially Balasubramaniam answered in the negative. When he was asked as to whether he introduced workman Chinnappan to anybody he answered in the negative. When Mr. Balasubramaniam was asked as to whether he saw anybody paying Rs. 5000/- to the workman Chinnappan, in his presence, the witness answered in the negative and stated that he never asked Tvl. Kuppusamy, Jeyaraj, Radhakrishnan, Munirathnam and Doraikannu to pay Rs. 5000/- to the workman Chinnappan at any time for any purpose. The Enquiry Officer recorded the evidence of Mr. Balasubramaniam. After recording the evidence, the Enquiry Officer made a remark in the deposition as follows:

"At this juncture, Sri N. Balasubramaniam wanted to speak about the truth and requested the Presenting Officer to cancel the deposition and both the Presiding Officer and the Enquiry Officer agreed to it."

The original deposition of the witness Th. N. Balasubramaniam cannot be cancelled by the Enquiry Officer.

12. The learned counsel for the workman submits that the witness requested that his deposition may be cancelled and that the Presiding Officer and the Enquiry Officer accepted to it cannot be cured flagrant violation of the principles of natural justice, and that workman has not agreed for the cancellation of the deposition of the witness Balasubramaniam, so the Presiding Officer and the Enquiry Officer cannot accept the request of Th. Balasubramaniam to cancel it. The learned counsel for the workman submits that such a cancellation of the deposition recorded of a witness containing answers which are favourable to the workman, without the consent of the petitioner/workman and without at that time giving an opportunity to him to say whether he agrees to cancel or not, cannot at all be sustained. The action of the Enquiry Officer establishes the enquiry is biased and partisan.

13. On the same day at about 3.00 P.M. the witness Balasubramaniam was once again examined. He has stated that the petitioner/workman was given Rs. 5000/- by the workers i.e. Radhakrishnan, Kuppusamy and Munirathnam. The learned counsel for the petitioner/workman submits that this type of cancelling the deposition given earlier by Thiru Balasubramaniam and examining him a fresh after some time and getting some answers against the petitioner workman certainly goes to vitiate the enquiry. Ex- M 16 is the complaint given by the

workers against the petitioner. It is an admitted fact that a copy of the complaint was not furnished to the workman. Ex. M16 is the basic documents upon which the investigation was conducted followed by a domestic enquiry, which is only on the basis of the complaint Ex. M 16 given by Munirathnam and others that the investigation was done and the enquiry was held. The learned counsel for the petitioner/workman submits that it is only proper that a copy of Ex. M 16 should have been furnished to the petitioner before the enquiry was commenced. Ex- M9 enquiry proceedings shows that the Enquiry Officer started questioning the petitioner himself at the first instance and during the course of examining him. Ex. M16 given by four workers to the Chairman of the Port Trust was read over and shown to the workman and his defence representative. But there is no endorsement to this effect in the enquiry proceedings. The main contention of the learned counsel for the petitioner/workman is that a copy of Ex. M 16 must have been given before the commencement of the enquiry. There is nothing on records before this Tribunal to show that the petitioner/workman or his defence representative was permitted to peruse Ex. M 16 before the commencement of the enquiry.

14. The learned counsel for the Petitioner submits that non-supply of copy of Ex. M16 vitiates the enquiry. He relies on decision reported in 2003 ALL . L. J. 1391, between Yar Mohammad V. Commissioner, Devi Patan Mandal, Gonda and others, the Hon'ble Lucknow Bench has stated as follows :

“ Industrial Disputes Act 1947 (14 of 1947). Sch. 2 Item 3—Disciplinary Enquiry—No copies of relevant document supplied to delinquent despite request No witnesses were examined to prove charges levelled—Only on basis of material available. Enquiry Officer submitted enquiry report—Order of removal from service passed in hurried manner based on Enquiry Report—Violative of Principles of natural justice—Liable to be quashed.”

15. The learned counsel for the petitioner submits that Ex. M16 is the basic complaint and non supply of copy of Ex. M16 amounts to denial of opportunity to the workman. He relies on a decision reported in 1993 (3) AIS. L. J. 452 Between Smt. Basanti Behera Vs. Government of Orissa and Others, the Hon'ble Orissa Admininstrative Tribunal, Bhubaneswar, has held as follows :

“ Non-Supply of copies of important documents and non-payment of subsistence allowance amount to denial of opportunity to defend the case by the applicant. Thus, in the instance case it was to be held that the proceedings against the applicant had been vitiated on the ground of denial of opportunity to defend herself against the charges which in effect led to violation of principles of

natural justice. Hence, removal order quashed with direction to reinstate the applicant and treat the period of absence as on leave sanctioning leave due and admissible.”

16. The learned counsel for the Petitioner submits that non-supply of copy of Ex. M16 to the petitioner amounts to denial of reasonable opportunity to defend the case and violation of Principles of natural justice. He relies on a decision reported in 2001 (2) A.T.J. 651 between G. Thimmarayappa V. The Superintendent of Post Offices, Chitradurga and Ors., the Hon'ble Central Administrative Tribunal, Bangalore Bench, has held as follows :

“ Post and Telegraphs Extra Departmental Agents (Conduct and Service) Rules 1964—Rule 8—Extra Departmental Agent-Dismissal—Natural justice—Order of dismissal challenged on the ground that relevant documents which were asked by the applicant not produced on the plea that the custodian of the documents has not supplied the same—Held non-production of such documents amount to denial of reasonable opportunity to defend the case and violation of Principles of natural justice—Impugned order quashed—Matter remitted back for fresh enquiry.”

17. The learned counsel for the petitioner submits that non-supply of Ex. M 16 is the denial of opportunity to the workman hence domestic enquiry vitiates. He relies on a decision reported in 1995 ALL. L.J. 148, between Committee of Management, Kisan Degree College, Vs. Shambu Saran Pandey and Others, the Hon'ble Supreme Court (From Allahabad) has held as follows :

“ Constitution of India, Art. 14—Industrial Disputes Act 1947 (14 of 1947). Sch. 2, Item 3—Departmental enquiry—Procedure—Inspection of documents—Opportunity for, should be given in first instance and not at time of conclusion of enquiry—Dismissal set aside and authorities directed to conduct enquiry afresh. Natural justice—Inquiry—Inspection of document in proof of charge—Delinquent seeking opportunity for inspection of such documents—Is entitled to such opportunity before final hearings.”

18. The learned counsel for the petitioner submits that non-supply of copy of Ex. M 16 is the deprival of the opportunity to the workman. He relies on a ruling reported in (1998) 6 SCC P. 651, between State of U.P. Vs. Shatrujan Lal and Another, the Hon'ble Supreme Court has held as follows :

“ Respondent's grievance was that copies of documents relied on, in the charge sheet were not supplied to him. Appellant-State admitted non-

supply of copies but pleaded that it was open to the respondent to inspect those documents—Rejecting this plea.

Held : If the appellant-State did not intend to give copies of documents to the respondent, it should have been indicated to the respondent in writing that he might inspect those documents. Merely saying that the respondent could have inspected the documents at any time is not enough. He has to be informed that the documents of which copies were asked by him, may be inspected. Access to records must have been assured to him."

Service Law—Departmental Enquiry—Supply of documents—Statements recorded during preliminary enquiry—Held, if charged employee is required to submit reply to charge sheet without having copies of the statement, he is deprived of opportunity of effective hearing—Further held, supply of copies is also necessary where witnesses making the statements are intended to be examined against him in regular enquiry."

Service Law—Departmental Enquiry—Hearing Irregularities in conducting of—Burden of proof that charged employee was not prejudiced in his defence—Placed in this case on appellant-State Respondent complaining that copies of statements recorded during preliminary enquiry were not supplied to him—Inference drawn that effective opportunity of hearing was not given to him and held, the applicant—State failed to establish that non-supply of copies of statements recorded during preliminary enquiry did not cause any prejudice to the respondent—Enquiry, therefore held, vitiated."

19. The learned counsel for the petitioner/workman submits that Ex. M1 was not proved by the oral evidence. He further submits that contents in Ex. M1 to be proved by oral evidence and the contents itself cannot constitute materials for findings of guilt. He relies on a decision reported in 1987 W.L.R. 252, between V. Subramaniam Vs. The District Khadi and Village Industrial Officer, Cuddalore. (2) Chief Executive Officer, T.N. Khadi and Village Industries Board, Madras-1, and (3) The President, Tamil Nadu Khadi and Village Industries Board (Secretary to Government Industries Department, Govt. of Tamil Nadu) Madras-9, the Hon'ble High Court of Madras has held as follows :

“Allegation of issue of bogus receipts and credit sales in favour of fictitious persons and that there was deliberate use of credit sale book to misappropriate funds—Defence plea that there was shortage of cash bill books—Absence of any oral evidence—Held, findings can be given only on

oral evidence—Failure to examine any witness and to inform the delinquent of the accusation and the testimony by which it is supported—Failure to afford opportunity to him to disprove the charges—Proof of entries in records by oral evidence necessary and they themselves cannot constitute materials for finding of guilt.”

20. Mere marking of Ex. M1 is not enough to prove the charge against the petitioner. The respondent has to prove the charge against the petitioner independently. The learned counsel for the petitioner submits that the respondent must rely on its own strength for success of a charge and not on the weakness of failure of proof of innocence of the workman. He relies on a decision reported in 1997 ILLN 421, between Arinda Chandra Prusty and Orissa Mining Corporation Ltd. and another. The Hon'ble High Court of Orissa has held as follows :

“Departmental enquiry—Burden of proof to establish charges rests with the department. The department having brought the petitioner before the enquiring officer for trial, it must rely on its own strength for success of the charge and not on the weakness or failure of proof of innocence of the petitioner—When the burden of proof lies on the department and it does not discharge it by adducing evidence, the charge must fail—When the enquiry officer instead of placing the burden of proof on the department threw it on the employee, his finding of guilt reached by on a wrong hypothesis which is not permissible in law cannot be supported and is liable to be quashed.”

21. After going through the evidence of witnesses and documents, we can come to a conclusion that the enquiry against the petitioner was not conducted in a proper manner. This Tribunal finds that the domestic enquiry against the petitioner was not conducted in a fair and just manner. Accordingly this point is answered against the respondent/management.

22. In the result, award is passed holding that the action of the respondent management in dismissing Thiru K.N. Chinnapan/workman on 14-7-87 is not justified. The said workman Chinnapan is entitled to be reinstated with backwages, continuity of service and other attendant benefits. Award passed accordingly. No costs.

Dated at Chennai, this 26th day of August, 2003.

V. K. THIRUNAVUKKA RASU, Industrial Tribunal

WITNESSES EXAMINED

For Worker

WW. 1 Thiru K.N. Chinnapan

For Management

MW. 1 Thiru T.G. Radhakrishnan

MW. 2 Thiru V. Munirathnam

MW. 3 Thiru M. Kuppusamy

MW. 4 Thiru L. Jayaraj

DOCUMENTS MARKED**FOR WORKER : NIL****For Management**

EX. M1 16-1-87 : Letter from Petitioner-Workman to the Vigilance Officer, Madras Port Trust (Xerox)

EX. M2 16-1-87 : Charge memo issued to the Petitioner/ workman (xerox)

EX. M3 19-1-87 : Explanation by petitioner/workman to Ex. M2 (xerox)

EX. M4 24-1-87 : Letter from the management to the petitioner/workman regarding enquiry (xerox)

EX. M5 24-1-87 : Lawyer's notice issued on behalf of the petitioner/workman by the management (xerox)

EX. M6 4-2-87 : Explanation by the petitioner/workman to Ex. M4 (xerox)

EX. M7 — : An extract from note file No. CME/DA3/ 297/87/Estt. (xerox)

EX. M8 5-3-87 : Letter from petitioner/workman to the management. (xerox)

EX. M9 — : Proceedings of the Enquiry officer (xerox)

Ex. M10 16-4-81 : Final written statement of the petitioner/ workman to the management (xerox)

EX. M11 26-5-88 : Letter from Smt. Krishnaveni, wife of the petitioner/workman to the management (xerox)

EX. M12 30-3-88 : Letter from petitioner/workman to the Secretary, Legal Aid Board, High Court, Madras (xerox)

EX. M13 3-6-88 : Letter from Petitioner-workman to the management (xerox)

EX. M14 1-7-88 : Lawyer's notice to the management (xerox)

EX. M15 11-6-87 : Findings of the Enquiry officer (xerox)

EX. M16 — : Complaint by Tvl. T.G. Radhakrishnan, V. Munirathinam, M. Kuppusamy and L. Jayaraj against petitioner/worker (xerox)

नई दिल्ली, 24 सितम्बर, 2003

का.आ. 2983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकारण चाण्डीगढ़ के पंचाट (संदर्भ संख्या आई.डी.

नं.-129/89) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/128/89-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 24th September, 2003

S.O. 2983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 129/89) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 23-9-2003.

[No. L-12012/128/89-IR (B-1)]

AJAY KUMAR, Desk Officer.

ANNEXURE**BEFORE SHRI S.M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH**

Case No. ID 129/89

General Secretary, State Bank of India Staff Congress, 719, Sector-22A, Chandigarh.

—Applicant

Versus

Regional Manager, Region-1, State Bank of India, Sector 8C, Chandigarh.

—Respondent

Appearances :

For the Workman : Shri Hardayal Singh

For the Management : Shri P. K. Khunger

AWARD

(Passed on 17th April, 2002)

The Central Government vide Notification No. L-12012/128/89-IR (B-3) dated 11th of August, 1989 has referred the following dispute to this Tribunal for adjudication :—

“Whether the action of the Regional Manager, Region. I.S.B.I. in punishing Shri A.S. Ranga. Then Clerk-cum-Cashier at their Air Force Station Branch Chandigarh by stoppage of one increment is legal and justified? If not, to what relief the workman concerned entitled to and from what date ?”

2. The application in claim statement has pleaded that while working at Air force branch Chandigarh the branch manager on the instigation of rival union rebuked

him and used filthy language on 6-8-85 as he was the lone member of the Union in the branch and Shri Gulati humiliated him. The branch manager cooked a story and issued a memo to him. After a period of about one year a charge sheet was served upon him containing a false story of assault. He filed a reply. Shri C.L. Chopra was appointed the enquiry officer. The management failed to prove the charges during the enquiry but the enquiry officer proved the charges partially, but the Regional Manager as disciplinary authority proved the charges fully and inflicted the punishment of stoppage of one increment with cumulative effect. The appeal filed by the workman was also dismissed which is gross injustice to the workman. The workman has prayed that punishment be declared illegal and the one increment be restored to the workman.

3. The management in their written statement has pleaded that the workman was charge sheeted for riotous and disorderly behaviour under the banks rules and his reply was unsatisfactory and he was charge sheeted and he was found guilty in the enquiry conducted by the management. The punishment was rightly imposed after holding enquiry which is under the principle of natural justice. The workman was given full opportunity during the enquiry. Thus he is not entitled to any relief and prayed for the dismissal of the reference.

4. Replication was also filed by the workman reiterating the claim made in the claim statement.

5. Both parties filed their respective affidavits in evidence. Enquiry proceedings has also been placed on record by the management. The workman examined himself as WW1 and the management examined Shri Des Bandhu as MW1.

6. I have heard the arguments of the learned counsel for the parties and gone through the enquiry file and evidence on record. In all fairness to the counsel for the workman, he has not disputed the fairness of the enquiry conducted against the workman. He has only argued that the punishment imposed upon the workman, which is of one increment with cumulative effect is very harsh punishment which is disproportionate to the alleged misconduct of riotous behaviour on the part of the workman. He has sought the indulgence of the Tribunal regarding the punishment imposed which is not commensurate to the misconduct U/S 11-A of the Industrial Disputes Act, 1947. I have carefully gone through the enquiry proceedings. I find that proper opportunity to defence was given to the workman. I have also gone through the charges which in my considered opinion does not warrant the punishment of stoppage of one increment with cumulative effect which is a recurring loss to the workman whole of his life. The ends of justice would be met if the increment is stopped for one year without cumulative effect. Thus in exercise of the powers U/S 11-A of the I.D. Act, 1947 the punishment of stoppage of one

increment with cumulative effect is substituted with stoppage of one increment for only one year. In a way the reference is answered. The Central Govt. be informed.

Chandigarh.

17-4-2002

S. M. GOEL, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2003

का.आ. 2984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तरी रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या आई.डी. नं.-137/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल.-41012/43/2002-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 24th September, 2003

S.O. 2984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 137/2002) of the Central Government Industrial Tribunal/ Labour Court, Lucknow now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 23-9-2003.

[No. L-41012/43/2002-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, LUCKNOW

PRESENT:

SHRIKANT SHUKLA

Presiding Officer

I. D. No. 137/2002

Ref. No. L-41012/43/2002/IR (B-1) dt. 31-7-2002

Ref. No. L-41012/43/2002/IR (B-1) dt. 12-8-2002

BETWEEN

Shri Dina Nath Tewari, Divisional Organization Secretary, Uttar Railway Karmchari Union, 119/74, Qr. No. 61, Naseemabad, Kanpur (U.P.) 208002.

AND

The Divisional Railway Manager,
Northern Railway
Allahabad Mandal,
Allahabad (U.P.) 211006.

AWARD

The Government of India, Ministry of Labour vide their references No. L-41012/43/2002/IR (B-I) dated 31-7-2003 and 12-8-2002 has been referred following reference for adjudication to this Tribunal—

“क्या मण्डल रेल प्रबंधक, उत्तर रेलवे, इलाहाबाद द्वारा कर्मकार श्री विनय कुमार तिवारी आत्मज श्री राम बहाल तिवारी की दिनांक 1-1-97 से सेवा समाप्त किया जाना न्यायोचित है? यदि नहीं तो संबंधित कर्मकार किस अनुतोष का हकदार है?”

Worker's case is that Sri Vinay Kumar Tewari S/o Sri Ram Bahal Tewari worked as Paniwala in the summer season since 1991 continuously and he continued working till 1996. The O.P. assured for regularising his services but on 1-1-97 he was not taken on duty and accordingly the services of worker Vinay Kumar Tewari was illegally terminated. It is also alleged that the worker Sri Vinay Kumar Tewari was to be regularised on 1991 as he worked from 1986—91 for a period of six years. It is alleged that his termination is illegal and unjustified and the worker has not paid compensation or notice.

The O.P. has denied the claim of the workman and has stated that as per verification of Sri Vinay Kumar Tewari, he worked as follows :

S.No.	Year	Days
1.	1985	68
2.	1987	116
3.	1988	77
4.	1989	70
5.	1990	88
6.	1991	57

It is also alleged that no further engagement of Hot Weather Staff has been done therefore he was not taken on duty. The O.P. has stated that there is no continuous service of worker and dates given in the claim statement wrong. It is also alleged that since 1990—92 that no further engagement of Hot Weather Staff has been done. The action taken by the Railway Administration are as per rules, the guidelines has been laid down by the Hon'ble Supreme Court of India in the case of Indrapal Yadav v/s Union of India. It is also alleged that the worker has deserted being continuously absent from duties.

After the filing of W.S. the workman remained absent therefore on 28-7-2003, case was ordered to ex-party against the workman and the next date was fixed 26-8-2003 for ex-party evidence of the O.P.

On 26-8-2003 the worker remained absent.

On 9-9-2003 also the worker remained absent.

On 16-9-2003 the O.P. filed affidavit in support of his case.

Heard learned counsel for O.P.

The O.P. has argued that the worker Vinay Kumar Tewari was engaged Hot Weather Staff for providing water to the passengers. It is also argued that the worker has not at all completed 120 days working in any year. The learned representative of the O.P. has drawn my attention on Paper No. 2/11 to 2/14 which is photo copy of casual labour book which shows the working of Sri Vinay Kumar Tewari as follows :

1.	31-5-86 to 25-6-86	26 days
2.	29-6-86 to 29-7-86	31 days
3.	4-8-86 to 14-8-86	11 days
4.	22-4-87 to 15-8-87	116 days
5.	11-5-88 to 13-8-88	78 days
6.	6-5-89 to 14-8-89	70 days
7.	3-5-90 to 14-8-90	88 days
8.	1-5-89 to 8-7-91	57 days

The O.P. case is that the worker i.e. Paniwala are engaged in Hot Weather Season Staff for providing water to passengers and according to his own casual labour book he was appointed in summer season till arrival of the monsoon. The worker Vinay Kumar Tewari never engaged and never completed 120 days working of any of year. It is also argued that worker was never engaged after 8-7-91 because the Railway Board has discontinued the engagement of Hot Weather Season Paniwala due to installation of Coolers and Tanks at Railway Stations. It is also argued that after 1992 no casual Paniwala has been engaged for work in Railway. The workman has failed to prove that he worked upto 1-1-1997 and therefore he was illegally terminated. On the other hand it is proved that the worker was never engaged after 8-7-1991. Therefore, I come to the conclusion that the worker failed to prove that he was terminated on 1-1-97 and therefore he is not entitled to any relief. The issue is answered in affirmative in favour of O.P. and the worker is not entitled to any relief.

नई दिल्ली, 24 सितम्बर, 2003

का. आ. 2985.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या आई.डी.नं. 45/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल-12012/408/99-आई आर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 24th September, 2003

S.O. 2985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 45/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 23-9-2003.

[No. L-12012/408/99-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Friday, the 5th September, 2003

Present : K. JAYARAMAN.

Presiding Officer

INDUSTRIAL DISPUTE NO. 45/2001

(Tamil Nadu State Industrial Tribunal I.D. No. 87/2000)

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the management of State Bank of India, Chennai and their workman Sri K. S. Sivaramakrishnan.]

BETWEEN

Sri K. S. Sivaramakrishnan : I Party/Workman

AND

The Chief General Manager, : II Party/Management
State Bank of India, Local
Head Office, Chennai

APPEARANCE:

For the Workman : M/s. Aiyar and Dolia,
R. Arumugam,
Sri N. Krishnakumar,
Advocates

For the Management : Sri K.S. Sundar and R. Uma
Maheswari, Advocates

AWARD

The Central Government, Ministry of Labour *vide* Notification No. L-12012/408/99-IR(B-I) dated 17/22-02-2000 has earlier referred this industrial dispute to Tamil Nadu State Industrial Tribunal for adjudication. The Tamil Nadu State Industrial Tribunal has taken the same on its file as I.D. No. 87/2000 and after the constitution of this Central Government Industrial Tribunal-cum-Labour Court, the said industrial dispute was transferred to this Tribunal and after getting the same, it was taken on file as I.D. No. 45/2001. The dispute referred by the Govt. in the Schedule is hereunder :—

“Whether the action of the management of State Bank of India in terminating the services of Sri K.S. Sivaramakrishnan with effect from 23-5-1995 is justified? If not, to what relief is he entitled?”

2. After the reference was taken on file, notices were issued to both sides and both sides have entered through their advocates and filed statements. No one has been examined as a witness on either side. The I Party/Workman has filed 12 documents and the II Party/Management filed only one document and they were marked as Ex. W1 to W12 and M1 respectively.

3. The contention of the Petitioner in the Claim Statement is briefly as follows :—

The Petitioner/Workman namely Sri K. S. Sivaramakrishnan joined the services of the Respondent/Management on 25-7-1978 and he was working as a typist. While so, the Respondent issued a charge sheet dated 22-9-95, wherein it was alleged that the Petitioner with fraudulent and ulterior motives afforded the credits to his S.B. Account No. S/111790 by debiting the National Clearing Account purported to be the proceeds of cheques dated 8-11-94 for Rs. 3000/-, 12-1-95 for Rs. 5,000/-, 7-4-95 for Rs. 3,000/- and 22-4-95 for Rs. 2,000/- and the Petitioner want only and with an intention to defraud the bank withheld the above instruments from entering into the clearing register and sending them for National Clearing thereby fraudulently enabling himself to misappropriate the bank funds to the tune of Rs. 13,000/- during the period from 18-11-94 to 26-4-1995. After this charge memo, the Petitioner has submitted his explanation and an enquiry was ordered against the Petitioner. The enquiry was conducted on 21-11-1996 and on that date, no witness was examined and no document was marked in his presence and on that date, the Petitioner submitted a letter to the Enquiry Officer explaining the

circumstances which led to his action in not presenting the National Clearing instruments and purely on account of his forefulness and absentmindedness. Further on that date, the Petitioner has brought to the notice of the Enquiry Officer that the omission which occurred was brought to the notice of the bank authorities by himself and not by anyone-else. He has clearly stated that the omission was only unintentional and further stated that there was adequate balance to honour the instruments at the drawee branch. But the Enquiry Officer even at the very beginning of the enquiry has cross examined him without following the procedures laid down by the rules. The Enquiry Officer without following the procedures have asked for certain clarifications from the Presenting Officer and then closed the enquiry. No witnesses were examined and no documents were marked in his presence. In the absence of relevant documentary and oral evidence, the Enquiry Officer has come to a perverse and erroneous conclusion that the charges levelled against the Petitioner have been proved. Then the Respondent/Management on the basis of the said perverse findings, issued an order of discharge against the Petitioner. Against that order, the Petitioner/Workman filed an appeal before the Appellate Authority. The Appellate Authority also totally on erroneous grounds dismissed his appeal. Aggrieved by the order of discharge, the Petitioner approached the conciliation officer and after the failure of conciliation, the matter has been referred to this Tribunal for adjudication. The Petitioner alleged that the enquiry conducted against him is not fair and proper and the enquiry findings are perverse and one sided. The enquiry proceedings were conducted without following any basic principles and without giving any opportunity to the Petitioner to meet the documents which were produced behind the back of the Petitioner and thus, the Petitioner has been deprived of an opportunity to meet the witness and documents, since the witness and documents were not produced in the enquiry. Therefore, the allegation contained in the charge sheet has not been proved and established by the Respondent in the enquiry. Even though the Petitioner has explained the reasons for the delay caused which were on account of his family circumstances, mental agony and depression which resulted in frequent disturbances in his mental stability and caused absentmindedness. The said explanation was not in any way denied by examining any witness by the Respondent and without considering all these facts, the Enquiry Officer has come to a conclusion that the Petitioner has admitted the charges framed against him and has come to a wrong conclusion. The order of discharge based on the perverse findings is too harsh, severe and disproportionate to the charges alleged and therefore, it is bad in law in various grounds. Further, the Appellate Authority relied on certain extraneous matters, which were not placed in the enquiry. Further, the copy of documents produced by the Presenting Officer were neither been provided to the Petitioner at the enquiry nor the Petitioner had been given an opportunity

to put forth his arguments over such reported documents. The Respondent/Management came to a wrong conclusion that the Petitioner had admitted the charge and it is well settled that admission should be unconditional. In the letter dated 21-11-95, the Petitioner has not given any unconditional admission. For all these reasons, the Petitioner prays that an Award is to be passed in favour of him.

4. As against this, the Respondent/Management in their Counter Statement has alleged that the Petitioner was appointed on 25-7-1978 under physically handicapped category and was working in the Respondent/Bank branch at Adyar as Clerk cum typist. The conduct of the Petitioner was not proper and he was awarded punishment of stoppage of increment for a period of two years with cumulative effect for making out a spurious draft for Rs. 5000/- and passing the draft by forging the signature of passing officer and for indulging in outside borrowing and indulging in production of teleserials by the order of punishment dated 25-1-93. Even prior to this punishment, the Petitioner was censured twice. Therefore, it is false to allege that the Petitioner was without any blemish. For the charge sheet, the Petitioner has submitted his letter dated 21-11-96 and accepted the charges and claimed that the Petitioner has committed the acts mentioned in the charge sheet and credited his S.B. account and accepted the omission as an unintentional and without mala fide. Therefore, by this admission it is clearly proved that the Petitioner as an employee of the bank misused his position and withheld the cheques intentionally from entering into the clearing register and sending them for National Clearing resulting in misappropriation of bank funds to the tune of Rs. 13,000/- during the period from 8-11-94 to 25-4-95. The Petitioner was given full opportunity to defend himself. The contention of the Petitioner that there were sufficient balance in the drawee bank for honouring the withhold instruments is not acceptable for the reason that the Respondent Bank was out of funds for a sum of Rs. 13,000/- during the period 8-11-94 to 24-4-95 by the act of withholding the instruments intentionally from entering in the clearing register and sending them for national clearing. The above said acts amounts to gross misconduct under para 521(4) (i) of Sastry Award read with para 18 and 28 of Desai Award. Those charges have been proved against the Petitioner on the basis of Petitioner's admission and supported by material evidence exhibited in the enquiry proceedings. Since the misconduct committed by the Petitioner was very serious and grave, the punishment awarded was appropriate and commensurate with the gravity of the misconduct. The Petitioner has participated in the enquiry and accepted the charges in his letter dated 21-11-96 and therefore, he cannot question the punishment awarded by the Respondent. The Petitioner having accepted the cheques, he is estopped from questioning the proof of charges. The Petitioner preferred an appeal to the Appellate Authority and the Appellate Authority after giving personal hearing and after verifying the materials

dismissed the appeal filed by the Petitioner by his order dated 21-10-1998. While passing the orders of punishment, the past record of service of the Petitioner was also taken into account. Therefore, the Respondent prays that the claim of the Petitioner is to be rejected.

5. In the above circumstances, the points to be decided in this case are as follows :—

(i) "Whether the action of the management of State Bank of India in terminating the services of Sri K.S. Sivaramakrishnan with effect from 23-5-1995 is justified?"

(ii) "To what relief is he entitled to?"

6. **Point No. 1 :—**

In this case, the charge against the Petitioner/Workman Sri K.S. Sivaramakrishnan, who was working as Clerk-cum-Typist in the Adayar branch of the Respondent/Bank, found by the Respondent to have been proved in the domestic enquiry is that the Petitioner/Workman with fraudulent and ulterior motives afforded the credit to his S.B. Account No. S 111/790 by debiting the National Clearing Account purported to be the proceeds of four cheques drawn in T.N.S.C. Bank, Besant Nagar Branch, Madras and it is their further charge that the Petitioner has want only and with an intention to defraud the bank withheld the above instruments namely four cheques, from entering in clearing register and sending them for national clearing, thus fraudulently enables himself to misappropriate the funds to the tune of Rs. 13,000/- during the period 8-11-94 to 26-4-95 and these acts are prejudicial to the interest of the bank and it amounts to acts of gross misconduct under para 521(4)(i) of Sastri Award. For this, the Petitioner/Workman was called for an explanation on the charge and an enquiry was ordered and on the report of the Enquiry Officer, the Disciplinary Authority has imposed the punishment of discharge on the Petitioner.

7. On behalf of the Petitioner, it was contended that the enquiry was not fair and proper, even though the Enquiry Officer has conducted the enquiry on 21-11-1996, on that date, no witness was examined and no document was marked in the presence of the delinquent employee as exhibits and further, the Enquiry Officer has not considered the reason given in the letter dated 21-11-1996, the copy of which is marked under Ex. W5 by the Petitioner, which led his action in not presenting the four cheques for National Clearing purely on account of forgetfulness and absentmindedness. It is the further contention of the Petitioner that the Petitioner has brought to the notice of the Enquiry Officer that the omission occurred was only because of the reasons stated above and it also brought to the notice of the Respondent/Bank branch authorities by the Petitioner himself on 27-4-1995 under the original of Ex. W1 and not by anyone else, but on the other hand, the Appellate Authority has come to a different conclusion in

his order without any oral or documentary evidence in the enquiry that the Petitioner's action is not voluntary and the Petitioner has handed over the cheques only after the matter came to light during the reconciliation of outstanding entries with the National Clearing Account at that branch and he came to a further conclusion that this amounts to be a belated attempt to camouflage the gravity of the offence without proof of any evidence. It is further argued on behalf of the Petitioner that the Enquiry Officer has cross examined the delinquent employee even at the beginning of the enquiry and without examining any witness and without marking any documents asked certain clarification from the Presenting Officer and he closed the enquiry. When the Petitioner has categorically denied the suggestion made by the Enquiry Officer with regard to the question of his intention to defraud the bank that he was want only withheld the cheques, the Enquiry Officer has to examine the witnesses and marked documents to speak about the allegations, but without doing all these things, he has come to the conclusion that the charge has been proved. Therefore, the finding of the Enquiry Officer is perverse and one sided. For this, the learned counsel for the Petitioner relied on a decision of the High Court of Madras reported in 1998 (3) LLN 326 in the case of K. GOVINDASWAMY Vs. TAMIL NADU CIVIL SUPPLIES CORPORATION LTD., wherein it is held that "*it is by now well settled that in a domestic enquiry as in a regular trial, the burden of proof of establishing the guilt on charge is always on the accuser and not on the accused and this burden must be discharged fully in conformity with the principles of national justice. The employer should take steps first to lead evidence against the workman charge, give him an opportunity to cross examine the said evidence and then should ask the concerned workman whether he wants to give any explanation about the evidence led against him, before asking the workman to produce his evidence. It was also held in catena of cases, that it is not fair at the very outset to closely cross examine even at the commencement of the domestic enquiry, the delinquent officer concerned and act upon the answers given or materials gathered during the preliminary enquiry, without making it part of the regular enquiry during the course of the domestic enquiry held by the Enquiry Officer appointed for that purpose.*" It is further contended by the learned counsel for the Petitioner that the enquiry was conducted without following the basic principles and procedures as laid down in law. The Enquiry Officer has come to the conclusion from the letter of original Ex. W1 that the Petitioner has admitted the guilt but he has not considered the entire explanation given by the Petitioner. It is well settled in number of cases passed by the Supreme Court and High Courts that in such case, it is not correct to assume that the employee has admitted his guilt in any manner by merely picking out a single sentence from the entire explanation and treating the statement of the employee as amounting to admission of guilt and such

finding will not be sustained. He further argued that the domestic enquiry is not an empty formality, it is a serious proceeding to give the Petitioner/delinquent employee a chance to meet the charge framed against him. Therefore, the charge is to be proved by the management and it cannot be said to be proved from presumption or assumption and therefore, the enquiry conducted by the management itself is bad in law on account of the non-compliance of elementary rules of natural justice.

8. On the other hand, the learned counsel for the Respondent/Management argued that in this case the accusation was based on matter of record and the delinquent employee has admitted these facts and his only defence is that the four cheques were not sent to national clearing only because of his forgetfulness and absentmindedness and under such circumstances, the burden of proving the allegation is upon the delinquent employee and therefore, there is no hard and fast rule that the Enquiry Officer cannot cross examine the employee in a domestic enquiry. Further, in this case, the Enquiry Officer has not cross examined the employee and it was only by way of clarification and not otherwise. In this case, it is clearly proved that the Petitioner/Workman as an employee of the Respondent/Bank misused his position by withholding the four cheques intentionally from entering in clearing register and sending them for National Clearing resulting misappropriation of bank funds to the tune of Rs. 13,000/- during the period from 8-11-94 to 25-04-95. In this case, the Petitioner was given full opportunity to defend himself and he was allowed to defend himself through his representative. But on the other hand, he has chosen not to contest the enquiry proceedings by raising any objection. The Petitioner has well known about his misdeeds and that was why he had given the letter dated 27-04-1995 admitting the withholding of the instruments. Therefore, it cannot be said that the enquiry was not conducted properly and with the procedure known to law.

9. But, again on behalf of the Petitioner, it is contended that if really, the Petitioner wanted to defraud the Respondent/Bank, then there would not have been sufficient balance in the drawee bank branch for honouring the four instruments, on the other hand, it was accepted by the Presenting Officer himself that there was sufficient balance in the drawee bank branch on the relevant dates of the cheques and therefore, the Enquiry Officer ought to have believed the version of the Petitioner that this was unintentional and without any malafide.

10. On the other hand, the learned counsel for the Respondent argued that there is no point in this argument namely that there was sufficient balance in the drawee bank for honouring the withheld instruments because, the Respondent/Bank was out of funds for a sum of Rs. 13,000 during the period from 8-11-94 to 25-04-95 by the wanton act of the Petitioner and therefore, it cannot be said that

there is no malafide on the part of the Petitioner. He further argued that in this case the enquiry was conducted by observing principles of natural justice and the Petitioner also participated in the enquiry and availed full opportunity and he failed to prove the bona fide and therefore, the charges framed against him have been proved on the basis of the Petitioner's admission. He also argued that it is upto the Enquiry Officer to believe or not to believe the stand taken by the employee but that does not mean that the finding of the Enquiry Officer is perverse and one sided and not followed the procedure in law etc. The enquiry was conducted in the presence of the Petitioner and relevant documents were produced by the Presenting Officer in the presence of the Petitioner and findings of the Enquiry Officer was also forwarded to the Petitioner and in such circumstances, it cannot be said that the enquiry was not conducted as per the procedure.

11. Though I find some force in the contention of the learned counsel for the Respondent/Management, on considering the entire evidence, whether the Petitioner was given sufficient opportunity and whether the procedure adopted in the enquiry was in accordance with the rules, I come to the conclusion that the proper procedure has not been followed in the domestic enquiry and sufficient opportunity was not given to the Petitioner/Workman. No doubt, the Petitioner/Workman has submitted a letter under original of Ex. W5, wherein he has stated the circumstances under which the four cheques were withheld by him. But, on the question put forth by the Enquiry Officer, the Petitioner/Workman denied the charge that he had done with an intention to defraud the bank. Therefore, I am unable to accept the contention of the Respondent/Management that in view of the admission, the question of examine or cross examination of any witness does not arise. Further, under such circumstances, the Respondent/Management ought to have examined the witnesses to prove the charges that the employee has misappropriated the bank funds to the tune of Rs. 13,000 and the employer/Respondent should take steps first to lead the evidence against the Petitioner/Workman and give him an opportunity to cross examine the said evidence/witness and then only they should ask the Petitioner/Workman whether he wants to lead any oral evidence against the management evidence/witness and so on. In this case, the Enquiry Officer who has conducted the enquiry has not done anything in that regard. On the other hand, he has taken the one word of the Petitioner/Workman from the letter and has come to conclusion that he has admitted the guilt. Furthermore, the intention to defraud must be established before the enquiry. But, in this case, the Enquiry Officer has presumed certain things without any evidence. Therefore, I find in this case without examining any witness and marking any documents in the presence of the Petitioner, the Enquiry Officer has come to a conclusion and imposed the punishment which cannot be sustained in law. Therefore, the procedure adopted in

the domestic enquiry is not proper and hence the action of the management of State Bank of India in terminating the services of Sri K.S. Sivaramakrishnan is not justified. Therefore, I find this point in favour of the Petitioner/Workman.

12. The next point to be decided in this case is to what relief the Petitioner/Workman is entitled?

In view of my finding above that the domestic enquiry conducted by the Respondent/Management was not proper, the order of enquiry proceedings is to be set aside. In this case of the Petitioner has questioned the conduct of domestic enquiry even in the Claim Statement. The Respondent/Management has got an opportunity to make a request before this Tribunal to adduce further evidence, if necessary, to substantiate their claim. But, in this case, the Respondent/Management has not chosen to do so and therefore, I have to pass an order of reinstatement of the Petitioner Sri K.S. Sivaramakrishnan without any back wages but with continuity of services, following the ratio of the judgement of the Hon'ble Supreme Court, as cited by the learned counsel for the Petitioner reported in 1984(1) LLN 8 in the case of SHAMBHU NATH GOYAL Vs. BANK OF BARODA, wherein the Hon'ble Supreme Court has held that “*the management can ask permission to adduce evidence to justify the dismissal in the written statement itself. If it does not choose to do so at that stage, it cannot be allowed to do it at any later stage of the proceedings by filing any application for the purpose which may result in delay which may lead to affecting the morale of the workman and compel him to surrender, which he may not otherwise do.*”

Therefore, this issue is answered accordingly in favour of the Petitioner/Workman. As such, I direct the II Party/Management State Bank of India to reinstate the Petitioner/Workman Sri K.S. Sivaramakrishnan in the services of the Respondent/Bank without any back wages but with continuity of service. No Cost.

13. Thus, the reference is answered accordingly.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced by me in the open court on this day the 5th September, 2003.)

K. JAYARAMAN, Presiding Officer

Witnesses Examined :—

On either side : None

Documents Marked :—

For the I Party/Claimant :—

Ex. No.	Date	Description
W1	27-04-95	Xerox copy of the letter submitted by the Petitioner to The Assistant General Manager, State Bank of India.
W2	23-05-95	Xerox copy of the order of suspension issued to Petitioner/Workman.
W3	22-09-95	Xerox copy of the charge memo issued to Petitioner.
W4	6-5-96	Xerox copy of the letter of Disciplinary Authority To the Petitioner/Workman.
W5	Nil	Xerox copy of the disciplinary proceedings.
W6	28-04-97	Xerox copy of the enquiry report.
W7	21-11-96	Xerox copy of the letter from Petitioner to Enquiry Officer.
W8	07-04-98	Xerox copy of the letter from Disciplinary Authority to Petitioner for personal hearing.
W9	20-04-98	Xerox copy of the letter from Petitioner to Disciplinary Authority.
W10	27-07-98	Xerox copy of the order of Disciplinary Authority Discharging the Petitioner from bank's service.
W11	03-09-98	Xerox copy of the letter from Petitioner to Appellate Authority.
W12	21-10-98	Xerox copy of the order of the Appellate Authority.

For the II Party/Management :—

Ex. No.	Date	Description
MI	22-02-93	Xerox copy of the order of punishment given to the Petitioner by Disciplinary Authority.

नई दिल्ली, 24 सितम्बर, 2003

का.आ. 2986.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं इण्डिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 16/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं० एल- 11012/56/99-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 16/2000) of the Central Government Industrial Tribunal/Labour Court II, Mumbai now as shown in the Annexure in the Industrial Dispute between the Employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Government on 23-9-2003.

[No. L-11012/56/99-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : S. N. SAUNDANKAR,
Presiding Officer

Reference No. CGIT-2/16 of 2000

Employers in relation to the Management of
Air India Limited

The Managing Director,
Air India Limited,
Air India Building,
Nariman Point,
Mumbai-400021.

Vs.

THEIR WORKMEN

Shri A.D. Salvi,
Adharshila Co-op. Hsg. Soc. Ltd.,
Flat No. 163, Block No. 163/19,
Borivali (West)
Mumbai-400092.

APPEARANCES :

For the Employer : Mr. Lancy D'Souza,
Representative

For the Workmen : Mr. Jaiprakash Sawant,
Advocate

Mumbai, dated 22nd August, 2003

AWARD

PART-I

The Government of India, Ministry of Labour by its Order No. L-11012/56/99-IR(C-1) dated 4-1-2000 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication.

“Whether the action of the management of Air India Ltd. in dismissing the services of Shri A.D. Salvi,

Ex-Traffic Assistant w.e.f. 16-4-1996 is legal and justified? If not, what relief the workman concerned is entitled to ?”

2. Workman Salvi was employed by the management Air India as Typist/Clerk in 1977 and that he was promoted as Senior Traffic Assistant. Vide Statement of Claim (Exhibit-6) workman pleaded that the management issued him charge-sheet dated 4-10-1995 alleging his unauthorised absence from duty. According to workman domestic inquiry conducted against him in respect of the said charge-sheet was against the principles of natural justice in-as-much undue haste was done and that the genuine difficulties for remaining absent were not considered and that he had intimated the management on his absence along with medical certificate. It is averred that the proceedings instituted against him was without authority of law and that findings recorded are perverse, consequently inquiry as a whole vitiates. It is contended based on the inquiry report workman was dismissed from service w.e.f. 16-4-1996 and that his dismissal being illegal, management be directed to reinstate him in service with full back wages, setting aside the inquiry.

3. Management Company resisted the claim of workman by filing Written Statement (Exhibit-9) contending that though the workman was promoted as Senior Traffic Assistant in the year 1989 was demoted as Traffic Assistant in the year 1995 and on the day of issuance of the charge-sheet, he was Traffic Assistant and not the Senior Traffic Assistant. It is averred that the workman remained absent without permission in the year 1995 for about 149 days. Prior to that also he was absent unauthorisedly for which he was penalised, but he could not mend his conduct and that his absence created obstacle in the working of the Company therefore he was issued chargesheet on 4-10-1995 which he replied on 29-2-1996, however explanation being not satisfactory domestic inquiry was initiated against him. It is contended that the inquiry committee giving sufficient opportunity conducted the inquiry and based on the evidence and the documents, recorded the findings and based on that after seeking approval by the application dated 16th April, 1996 in Reference No. 1 of 1990 from the National Industrial Tribunal, Mumbai, the workman was dismissed from service w.e.f. 16-4-1996. It is contended that inquiry being fair and proper and the findings not perverse, the claim of the workman be dismissed with costs in limine.

4. On the basis of pleadings Issues were framed at Exhibit-11. In so far as preliminary issues workman filed affidavit in lieu of Examination-in-Chief (Exhibit-15) and closed oral evidence vide purshis (Exhibit-17). In rebuttal, convenor of the inquiry committee Mr. Thakur filed affidavit (Exhibit-18) and the management closed oral evidence vide (Exhibit-19).

5. Workman filed written submissions (Exhibit-24) and the management Company (Exhibit-21) with copies of

rulings (Exhibit-22). On perusing the record, written submissions and hearing both the parties, I record my findings on the preliminary issues for the reasons mentioned below :

Issues	Findings
1. Whether the domestic inquiry conducted against the workman was as per the principles of natural justice?	yes
2. Whether the findings of the Inquiry Officer are perverse?	No

REASONS

6. Admittedly domestic inquiry was conducted against the workman in respect of the chargesheet dated 4-10-1995. According to workman as averred in Statement of Claim inquiry was held in haste and principles of natural justice have not been followed therefore it is unfair, whereas on oath he stated that the inquiry committee did not inform him the procedure of the inquiry and that committee put certain questions to him and other employees and that since he was not aware on the inquiry and the examination or the cross-examination, inquiry vitiates. Workman had admittedly received chargesheet pages 12/Exhibit-13 and that proceeding page 17-22 bear his signatures. Endorsement on these proceedings clearly show on understanding the same he had signed. Therefore, hardly lie in the mouth of workman that he did not understand the proceedings. Workman had replied the charges therefore it is clear fully knowing the same, he gave reply. Workman admits that he was informed by the committee to engage Defence Representative however, he refused therefore now he cannot have grievance on that. On perusal of the inquiry proceedings (Exhibit-13/14) it is seen the charge was in respect of absenteeism and that workman clearly admitted in his cross-examination para 8 that he was absent from duty as mentioned in the chargesheet and from this point of view and that workman even in the inquiry admits on the absenteeism nothing remains for the employer to enquire into and in such case inquiry is an empty formality. Their Lordships of the Apex Court in *Sur Enamel and Stamping Works V/s. Their Workmen 1963 II LLJ SCC 367*, ruled that enquiry cannot be said to have been properly held unless:

- (1) the employee proceeded against has been informed clearly of the charges levelled against him;
- (2) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges;
- (3) the employee given a fair opportunity to cross examine the witnesses ;
- (4) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and

(5) the Inquiry Officer records his findings with reasons for the same in his report.

In the case in hand, workman participated in the inquiry and that he straight away admitted his absence from duty. He had received the copy of the report and had replied it. It is not that without giving opportunity inquiry was held. No tailor made procedure is applicable to the domestic inquiry. The question whether the principles of natural justice have been violated or not is to be found out on consideration as to whether the procedure adopted by the appropriate authority is in accordance with the law or not, whether the delinquent knew the charges he was going to face, whether he has been given opportunity to state his case and whether the authority acted in good faith. In this context nothing to show that prejudice had caused to the workman on any count.

7. So far the findings according to the workman are perverse is concerned, 'perversity' is that when the findings are such which no reasonable person would have arrived at the basis of material before him as pointed out by the Hon'ble Apex Court in *Central Bank of India V/s. Prakash Chand Jain reported in 1969 II LLJ 877*. On perusing the inquiry proceeding it is seen, findings were recorded based on the evidence on record therefore cannot said to be perverse. Therefore considering the evidence in the light of the tests laid down in the decision referred to above hardly can be said that inquiry vitiates and the findings are perverse. Issues are therefore answered accordingly and hence the order :

ORDER

The domestic inquiry conducted against the workman was as per the principles of natural justice and the findings of the Inquiry Officer are not perverse.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2003

का०आ० 2987.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवर इण्डिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय औद्योगिक अधिकरण, मुम्बई के पंचाट [संदर्भ संख्या Comp. No. NTB 7/2003, Comp. No. NTB 8/2003 (Ari. NTB 1/1990)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं० एल- 22013/03/2003-आई०आर० (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award

[Ref. No. Comp. No. NTB 7/2003, Comp. No NTB 8/2003 (Ari. Ref. No. NTB 1/1990)] of the National Industrial Tribunal/Labour Court, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India Ltd. and their workman, which was received by the Central Government on 23-9-2003.

[No. L-22013/03/2003-JR(C-1)]
S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT MUMBAI

Present : Shri Justice S. C. Pandey
Presiding Officer

COMPLAINT NO. NTB-07 OF 2003

(Arising out of Ref. No. NTB-1 of 1990)

PARTIES: M. R. FERNANDES : Applicant
V/s.

1. Air India Ltd.
2. J. N. Gogoi : Opp. Party
3. Capt. M.K. Hathi
4. R. D. Bunsha

COMPLAINT NO. NTB-08 OF 2003

(Arising out of Ref. No. NTB-1 of 1990)

PARTIES: M. R. WADIA : Applicant
V/s.

1. Air India Ltd.
2. J. N. Gogoi : Opp. Party
3. Capt. M. K. Hathi
4. Tarun Manilal

APPEARANCES:

For the Applicant : Mr. Mohan Bir Singh Adv.

For the Opp. Party : Mr. Vaidya, Adv.

State : Maharashtra

Mumbai, dated the 5th day of September, 2003

COMMON AWARD

1. These are two complaints filed under Section 33-A of Industrial Tribunal Disputes Act, 1947 (the Act for short) filed by Mr. M. R. Fernandes (Complaint No. 7 of 2003) and Mr. M. R. Wadia (Complaint No. 8 of 2002) against the Air India Ltd. (the company for short) and three others. The two complaints raise common questions of facts and law. They are being disposed of together by this Common Award passed in NTB-7 of 2003 and NTB-8 of 2003.

2. It is alleged in Complaint No. 7 that M. R. Fernandes was employed as a Pilot with the company. He superannuated on 3-8-2001 pursuant to the agreement dated 30-12-95 (Exhibit C) between the company and the trade union representing the Pilots called Indian Pilots Guild, the complainant was re-employed for two years after attaining the age of superannuation at age of 58 by order dated 31-8-2001 (Exhibit B). It is asserted by the complainant that by order dated 11-4-2003 (Exhibit A) issued by Captain R. D. Bunsha (Respondent No. 4) his services stood terminated w.e.f. 11-5-2003.

3. In Complaint No. 8, the complainant M. R. Wadia stated that he was employed as a pilot with the company. He superannuated on 30-6-2002. He was re-employed for two years from next date of superannuation as per agreement dated 31-12-95 (Exhibit C) between the company and the trade union representing the pilots, called Indian Pilots Guild. The order of re-employment was dated 28-6-2002 (Exhibit B). It is alleged by the complainant that by order dated 2/3-5-2003 (Exhibit A) passed by Tarun Manilal (respondent No. 4) his services were terminated with immediate effect and he was asked to take one month's salary in lieu of notice.

4. Both the complainants assail their orders of termination on common grounds. It is urged in both these complainants that orders of termination of services of the complainants are illegal for the reason that on account of the pendency of Reference No. NTB - 1 of 1990 the company was required to file an application for approval before this tribunal in each case. Since the procedure given in Section 33(2)(b) of the Act was not followed, the orders of termination of their services are bad. It is further stated that the termination of services of the complainants was in violation of Section 25-F of the Act. It is also urged as an alternative ground that both the orders were passed as a punishment without giving them reasonable opportunity to defend.

5. The complainant M. R. Fernandes stated that he was scheduled to travel on Flight No. 711 upto Dubai. He was given the duty of operating Flight No. 955 from there on the next day. It is alleged that at about 10.30 hrs. while he was in aircraft, he was asked to operate the flight upto Dubai and thereafter, from Dubai to Trivandrum and Cochin. It was claimed that flying the Aircraft from Dubai to Trivandrum and Cochin would have involved 17 hours of duty without rest. He stated that on 14-3-2003 he was on duty of 16 hours till midnight and had got up early in the morning at 4.00 hours on 15-3-2003 being ready to be picked up for flight No. 711 at 5.30 hrs. It is claimed by the complainant therefore, he refused the flight duty to Trivandrum and Cochin. It is alleged on his return to Mumbai on 17-3-2003 after operating the scheduled flight he was charged with misconduct and disobedience and threatened with termination of his services by respondent No. 3 and No. 4. The complainant made a representation to

respondent No. 2 dated 18-3-2003. He sought an interview. However, even without hearing him services were terminated.

6. M. R. Wadia in his complaint stated that the termination of his services was by way of punishment. It was stated that the reason for termination was for actively participating in strike behind the scenes. The complainant relied upon a news paper report dated 10-5-93 (Exhibit D) of Asian Age.

7. The complainants in effect pleaded for setting aside the orders of termination of their services and reinstatement with back wages.

8. The reply of respondents complaints No. 7 of 2003 was in short is the application under Section 33-A did not lie as there was no breach of Section 33 of the Act. The contractual termination of service of the complainant did not amount change in service conditions or dismissal. The complainants was not a workman. He had superannuated on 30-6-2002. He ceased to be an employee of the company as per Certified Standing Orders. He could not be a line pilot under the Memo of Settlement dated 3-1-1998 as he was not a member of IPG. The termination was done in terms of stipulation in contract and not for any misconduct. It is alleged that an application for granting consent award in terms of settlement dated 3-1-1998 was filed.

9. It is not necessary to give the details the reply filed by the respondents in the complaint No. 8 of 2003. It was on the same lines.

10. At the request of the counsel for the complainants and the respondents this case was heard without recording any evidence.

11. The first question that has to be determined is whether the complainant can file this application. The words used in Section 33-A of the Act gives right to an employee to file an application if he is aggrieved by violation of Section 33 of the Act during the pendency of proceedings before the authorities named in Section 33-A. Since the pilots in question are employees of company, they can definitely file a complaint if they are aggrieved. It is not in dispute that the proceedings before this tribunal are pending. It is argued that assuming that the terms of reference in NTB No. 1 of 1990 from part of the industrial dispute relating to service conditions of the workman of the company, the complainants are not workmen. They ceased to be workmen on the date of their superannuation. They are employees appointed as per terms of re-employment. According to counsel for the company a contract pilot cannot be treated as a workman. It has been urged that a person ceases to be workman on superannuation as per terms of Certified Standing Orders. It has been argued that as per Standing Orders a workman have been classified (a) Permanent (b) temporary. The contract pilots do not fall in any of the category. The learned

counsel for the complainants argued that a contract pilot can be classified as a Casual Workman. The clause relating to cessation of status of a person as a workman on superannuation relates only to workman who are in regular employment of the company.

12. In the opinion of this tribunal, the application of word 'workman' or 'workmen' in Section 2(s) of the Act is the same as it is defined in Section 2(s) of the Act. There is nothing in the context of Section 2(s) to hold that different definition of workman has to be applied. The exception (bb) to Section 2(rr) indicates that there can be employment of a workman for a term and non-renewal of the contract employment between employer and the workman concerned or termination of employment on expiry of that term may not amount to retrenchment. If contractual employee could not be treated as a workmen, there was not need to enact exception (bb). The same logic shall apply to a re-employed pilot. The argument based on subordinate legislation like Certified Standing Orders cannot be looked into for interpreting Section 33 of the Act when the Act itself defines workman in Section 2(s) of the Act. However, it is argued that the definition of workman under Section 2(s) of the Act does not cover a pilot. It has been argued that pilot is not a workman on account of exception (iv) of Section 2(s). The learned counsel for the complainants points out that the pilots are being treated as workman for a considerable period. He has placed on record. A relevant portion of the Award of National Industrial Tribunal dated between Indian Airlines Corporation vs. their workmen presided over by Justice Bind Basni Prasad published by notification dated 15-3-1958 in Gazette of India Extraordinary on March 20, 1958. This award may not be binding on the Air India. It can, however, be treated as evidence of fact that the aforesaid tribunal had held in the case of pilots of Indian Airlines that they are workmen. No evidence has been placed on record. In view of this matter the view taken by Justice Bind Basni Prasad as a Presiding Officer of National Industrial Tribunal, to say the least, has persuasive value as a precedent. It appears to this tribunal that a line pilot (i.e. who is supposed to fly) is required to fly an Aircraft. An Aircraft is nothing but a flying machine carrying passengers and cargo during the course of a Commercial flight. The main duty of a pilot to fly the machine safely. There are pilot in command and a co-pilot in an Aircraft. Their core job is to see that a plane takes off safely and lands safely at its destination. It is true that pilot in command is supposed to be in full control of the machine during a flight and may be authorized to deal with those who interfere with his work in accordance with the situation in a given event; however, these powers of control are in interests of safety of Aircraft, the passengers and the cargo. These powers are inextricably mixed with his duty to fly safe. He is not given any power of supervision over the workman. It can be safely said that a pilot does not exercise supervisory powers over other employees. All he is required

to do is to control the flight of an aircraft. He does not do any managerial function. Whatever little control he exercises over the member of a cabin crew is related to or incidental to his main duty of flying an aircraft safely with usual comfort to flying passengers. Therefore, he cannot come within exception (iv) to Section 2(s) of the Act. His work is operational, technical and skilled. Even though, he may get more than Rs. 1600 per month the pilot appears to be covered by the definition of a workman. A pilot is not employed mainly in managerial or administrative capacity. Therefore, he appears to be a workman within the meaning of Section 2(s) of the Act.

13. The next question for consideration is whether Reference No. NTB-1 of 1990 is involved in the service conditions of re-employed pilots. It has been argued that workmen are no longer covered by the terms of reference. It would not be out of place to reproduce the terms of reference.

- (v) Whether there should be relativity/parity in the matter of wage structure between Indian Airlines and Air India with regard to comparable categories of workmen performing similar functions and if so, to what extent?
- (vi) Whether there should be any relativity in the matter of wage structure between various categories of workmen within IA and AI? If so, how the relativity is to be determined and to what extent?
- (vii) What allowance, benefits and other service conditions would be relevant for the purpose of deciding the relativity/parity as between the employees of Indian Airlines and Air India as well as between various categories of employees within Indian Airlines and Air India?
- (viii) What are the categories of employees in AI and IA who should be treated as workmen and non-workmen depending upon the nature of duties, wage structure and other privileges, perquisites and benefits applicable to the said employees?
- (ix) In view of the prevailing situation and anomalies in the wage structure within the two airlines and between the two airlines and in order to avoid conflicts on interpretation of the above issues as settled by the Tribunal, the Tribunal is also required to make the award relating to the following aspects of the terms and conditions of the employees of Air India and Indian Airlines for the period 1-9-90 onwards for a period of 5 years :
 - (a) Revised pay scales and fixation of pay in the revised scales.
 - (b) Compensatory and other allowances, excluding Dearness Allowance.

- (c) Hours of work.
- (d) Shift working otherwise than in accordance with standing orders.
- (e) Classification by grades.
- (f) Rationalisation."

14. It may also be noted that the record note dated 30-12-95 is a policy statement of the company regarding the manner a retired pilot shall be re-employed. This was made after consulting the I.P.G. It was made clear that on retirement a pilot may be re-employed for maximum two years. It is also clear that the emoluments and other benefits of the retiring pilot were protected. A perusal of conditions (v) to (iv) reproduced above shall show that in Reference NTB-1 of 1990 the entire wage structure of Pilots of Air India as compared to pilots of Indian Airlines have to adjudicated upon. The same exercise is done in respect of allowances and benefits of the pilots of both the companies. In the terms of reference (v), (vi), (vii) and (ix) are inter-related. The condition No. (viii) also likely to affect the pilots. They may depend upon the award of Tribunal as it is required to do some restructuring. The Central Govt. while making the reference itself has stated as follows in paragraph :

“(iv) The disputes and matters requiring adjudication by this Hon’ble Tribunal (as reproduced above), directly and materially affect the Applicant as also its diverse employees. Apart from the generality of the disputes and matters specified in the Schedule, Items (vi), (vii), (viii) and (ix) directly, materially and vitally affect the Applicant and its employees. The adjudication of the matters specified at items (i) to (v) of the Schedule is also likely to affect the Applicant and its employees.”

In view of the above situation, it cannot be said that the complaints cannot be affected by the revision of pay scales and compensatory allowances from 1990 for five years. It is not in dispute before that they retired at the age of 58 years after long service in the year 2001 or 2002. They would be in service at the time Reference. NTB-1 of 1990 was made. The award may determine the wage and the compensatory allowance to which the workmen may be entitled. It may affect the last pay from 1990 and allowances to which the workmen were entitled from 1990 to 1995. The terms of reference do not mean that the award would be valid for the period between 1990 to 1995 only. It means that award shall determine the wages and structure should be given to workmen between 1990 to 1995. The pendency of this case does not affect the jurisdiction of this tribunal to determine the aforesaid. The award of the tribunal is likely to affect all the persons who were in the service when the reference was made. The pay determined

by this tribunal shall be same or a period of five years if the reference is accepted. So, in normal circumstances that pay may be same or more in the year 2001 or 2002. The workman must have received the last pay as per old rules. The change in pay by the award may also change the existing emoluments. The same may apply to allowances. The conclusion is that even after retirement, the workman cannot be deprived of their rights emanating from the order of reference No. NTB-1 of 1990. They are, therefore, still party to the Industrial dispute because the award is likely to affect their conditions of service qua regular pilots. They are concerned with the industrial dispute referred to this Tribunal in Ref. No. NTB-1 of 1990. The application under Section 33-A of the Act cannot be rejected on the ground that the workmen are not concerned with the dispute in the aforesaid reference.

15. The next question for determination is if the workmen were discharged or punished by way for any misconduct not connected with the dispute. It is not in dispute that the services of both complainants were terminated by an order in writing. In complaint No. 8/2003 addressed to Shri M. R. Wadia, it was stated that his services in terms of clause (v) of the contract his services are terminated with immediate effect and he will be paid one month's salary. This is order of May 3, 2003. In the letter addressed to Capt. M. R. Fernandes, a notice/order has been made according to the terms of clause 2 (v) of the contract. He is given one month's notice of termination of his service from 11-5-2003. The letter dated 11th April, 2003 says that the employment shall cease on 11th May, 2003. It is also not disputed that as per terms contract of re-employment it provided by clause as follows:

"(v) Notwithstanding anything herein contained, this contract may be terminated by us either by giving one month's notice or payment in lieu of one month's notice without assigning any reason."

16. The counsel for the complainant, however, submits that the power could be exercised under clause(v) but there was power in this tribunal to examine the question if the order was passed for any misconduct. In other words, the impugned orders were a camouflage for the intention for punishing the workmen for misconduct. It is apparent from the perusal of the orders that they are passed strictly in accordance with clause (v). It is also well established that clause (b) of sub-section (2) of Section 33 is not attracted where the power is not exercised for dismissing or discharging for misconduct. Therefore, there must be an element of punishment for a misconduct in the order of termination. The learned counsel for the workman has cited the case of Mahendra Singh Dhantwal vs. Hindustan Motors Ltd. reported in 1976 Lab IC 1337 for lifting the veil and looking into the orders. There is no doubt that such power can be exercised. In Short, it was stated the workman in complaint No. 7/2003 was punished for not

operating the flight upto Cochin. In complaint No. 8 of 2003 the complainant stated that his services were terminated because he had participated in the strike behind the scenes. The company had denied in both the written statements that the complainants were dismissed by way of punishment. It has been asserted that the workman be put to strict proof of the allegations.

17. Having considered the argument of both the counsel on this point, and after giving some thought over the matter, this tribunal is of the view that workmen in both these cases have not been able to establish that they were punished for a misconduct. The clause (v) has not been challenged before this tribunal for violation of any provisions of this Act, empowering this tribunal to declare that such a contract could not have been made. The learned counsel for complainants argued that despite the existence of clause (v) this tribunal should go behind the order to find out that the orders of dismissal a mere ruse. However, the company has in its favour the power under clause (v) and the impugned orders say that powers were exercised under clause (v). What weight must be given to this assertion? We must begin with the presumption that these orders mean what they say. No presumption can be drawn by reasonable man that these orders are not what they seem to be. The courts always presume that men act in good faith. There is no presumption for bad faith. If they do so then they shall be flooded with litigation. However, the presumption of good faith is rebuttable presumption. That is to say this presumption is not conclusive of the matter. In other words it leaves the windows of mind open for appreciation of the opposite fact. A necessary doubt is regarded as an essential tool in any investigation of science or speculation in philosophy. Therefore, *prima-facie* the orders of termination are deemed to be good unless the contrary is proved. Now the argument is that lift veil and find out the ugly face of bad faith or malafide in these orders. The question is: What is the evidence for holding that there was bad faith to extent that these orders were passed by way of punishment. In the opinion of this tribunal the complainants have failed to discharge this burden for showing that the orders of termination emanated from a mind which wanted to dismiss these workman for committing a misconduct. We may assume for a moment, that all that complainants say is correct. In fact, they have not proved the facts by letting in evidence. The case of M.R. Fernandes in Complaint NTB-7/2000 can be culled out from his Memo of appeal. It appears that he had stated that Dy. Director K. Bunsha and Capt. Halthi were livid with rage against him in their meeting on 17-3-2003 for refusal to operate the flight. The order was passed for refusal to obey the order therefore, it was a misconduct. In NTB No. 8/2003 Shri M. R. Wadia has taken the stand that he was sacked for working behind the scenes and participating in the striking evidence. This tribunal is of the view that the material placed by the complainant is not sufficient for

proving that the orders impugned were *mala-fide*. Apart from that no oral evidence was led, it was necessary for the workmen to show these orders were actuated on account of spite or rage. In other words, the intention of the maker of these orders must be *manifest* from some other facts, that he wanted to punish the workmen. This can be proved only by placing the facts on record that the motive spring of the mind those who passed the orders of termination was actuated by facts which are germane to punishment for a misconduct. Such intention can be proved by leading evidence oral as well as documentary for coming to a positive conclusion. The evidence on record is such that this tribunal can only say that facts sought to be proved by the workmen are neither proved nor disproved. It is not suspicion of the complainants but the concrete facts that prove the intention which was motivated by malice. In both these cases, the weight of evidence is not such, that it can be positively said that orders of termination were passed by way of punishment for any misconduct. This tribunal can adjudicate in favour of the complainants only when it comes to the conclusion that the orders were passed by way of punishment. If they were not passed by way of punishment, Section 33(2)(b) of the Act did not apply. There is no violation of Section 33 of the Act.

18. The result of the aforesaid discussion is that this tribunal holds that both the complaints under Section 33-A of the Act as framed and filed by the complainant, Shri M.R. Wadia and Capt. M.R. Fernandes are maintainable. However, they have failed to sustain their claim that orders of termination dated 11th April, 2003 against Captain Fernandes terminating his services as a contract Pilot from 11-5-2003 and the order dated 03-5-2003 passed against Capt. M.R. Wadia terminating his services as a contract pilot from immediate effect are in violation of Section 33(2)(b) of the Act. Accordingly, an award is made holding that both the aforesaid orders are legal. Let the copies of this award be sent to the Central Government in compliance with Section 33-A of the Act. Photo copy of this award be kept in NTB-8 of 2003.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2003

का. आ. 2988.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं इण्डिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में राष्ट्रीय केन्द्रीय सरकार औद्योगिक अधिकरण-1, मुम्बई के पंचाट (संदर्भ संख्या 22/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. प्र०-11012/95/99-आई आर (सी- I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 24th September, 2003

S. O. 2988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 22/2000) of the Central Government Industrial Tribunal-I, Mumbai. Now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India and their workman, which was received by the Central Government on 23-9-2003.

[No. L-11012/95/99-IR(C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, MUMBAI

Present : Shri Justice S. C. Pandey

Presiding Officer,

REFERENCE NO. CGIT-22/2000

PARTIES : Employers in relation to the management of
Air India

And

Their Workman

Appearance :

For the Management : Mr. Lancy D' Souza Adv.

For the Workman : Mr. Ramesh Dubey, Adv.

State : Maharashtra

Mumbai, dated the 05th day of September, 2003

AWARD

I. This reference is made by the Central Government under clause (d) Sub-section 1 and Sub-section 2a of Section 10 of the Industrial Disputes Act, 1947 (the Act for short). The terms of reference is respect of Industrial Dispute between R.D. Rathod and the Air India Ltd. (the company for short) are as follows :

“Whether the action of the management of Air India Ltd. Mumbai in removing Mr. R.D. Rathwad, an Ex-Sr. Cleaner from service with effect from 26-12-1989 is just and legal? If not, to what relief is the workman entitled to”.

2. The workman stated in his Statement of claim that he was employed as a Cleaner at Santacruz from 1977. It is alleged by him that he developed inflamed spots in his hands and legs. This was an occupational disease as the workman was required to clear machineries soaked with oil. The condition of his skin grew worse as time went on.

He was referred by Medical Services Department of the Company to Specialists. The specialists carried out various tests and therefore, they gave treated him. He did not get permanent relief despite the treatment from 1982 to 1987. The workman started to consume liquor in order to relieve himself of pain. He claimed that they company should have posted him in a different job. It was done. His illness became aggravated. He was under treatment of Dr. A.K. Pathak of Dombivili, Between 23-5-1989 to 03-6-1989. In February, 1990, the workman came to know about the order of his dismissal. He therefore, contacted Shri, Mahatre and Shri Gaytoned. He was promised help. He was asked to get himself treated by Dr. Badrole of Medical Service Department. He attended alcoholic recovery programme between 1990 to 1996. In 1992, the reinstatement of the workman was approved. It is claimed by him that he did not receive any copy of the order passed by the management of the company as he was attending the treatment in the Medical service Deptt. of the company. On 10th July 1995, Dr. Juliet Nathware recommended the case of the workman. The workman filed appeal on 30th April 1997. The appeal was rejected. Thereafter, the workman raised an industrial dispute before the Regional Labour Commissioner (Central). On failure of reconciliation the matter was sent to the Central Government. The workman stated that ex Parte proceedings were conducted in English language. The workman was not called upon to furnish his explanation to the enquiry report. The workman was under going treatment at the time of enquiry. He was not explained about the various heads which he could avail. No sympathy was shown to the workman.

The company in its written statement stated that workman raised the dispute after about 10 years before this tribunal. Their delay was fatal to the case of the workman. It was stated that on 3rd April 1989, the workman was given charge sheet charging him of Habitual Absence without leave for more than 10 days. Also for committing acts subversive of discipline. The workman was given the charge sheet. He did not reply. The workman was informed that enquiry shall be held against him by the enquiry committee by letter dated 26-4-1989. On 08th May, 1989 a letter was sent by the enquiry committee for his appearance. Another opportunity was given to the workman of his appearance on the 20-6-1989. The proceedings were adjourned again 20-6-1989. When the workman did not appear. The case was further adjourned for appearance of workman on 16-11-1989. The registered letter was returned with a remark 'not known' return to the sender. Thereafter an ex parte enquiry was concluded against the workman. The workman was found guilty. Thereafter, the order of dismissal was passed that the workman remained absent for 107 days without leave and that he received several punishment for such conduct in the past. The order was passed on 26-12-1989. The rejoinder of the workman does not show any special pleadings were made by except the

fact that he asserted that approval should have been obtained under section 33 (2)(b) of the act.

4. This tribunal states that plea taken in the rejoinder could not be pressed without pleading that a proceeding connected with the dispute was pending before this tribunal. On 26-12-1989 no such proceeding was shown to be pending. No issue was framed on this point.

5. The following preliminary issues were framed on 25-1-2002.

- (i) Whether this court is entitled to refuse relief to the workman on the ground of delay and laches under the facts and circumstances of the case?
- (ii) Whether the enquiry conducted against the workman in fair and proper in accordance with the principles of natural justice?
- (iii) Whether the findings recorded by the Enquiry Officer are perverse ?

6. The workman filed his affidavit in support of his case. He was cross examined. After the cross examination of workman was over it was expressed that the workman did not want to lead any evidence. The counsel for company stated that he did not want to examine any witness. The workman admitted that he had received the charge sheet dated 3rd April, 1989. He accepted that he received the letter dated 26-4-1989 and a greed that the acknowledgement bore his signature. This is document Exhibit M3 informing the workman about constitution of enquiry. He denied receipt of letter dt. 08th May 1989 Exhibit M4. He denied that he had any knowledge about the enquiry. In his examination in chief his case was that he had not knowledge of the pending enquiry.

7. The Issue No. 1 and 2 are taken together. It is well established that when a reference is made to this tribunal, then it would be imprudent to reject the reference on sole ground of delay. This tribunal is however, required to bear in mind if the delay in raising the dispute has affected the merits of claim of workman and it would not be proper to grant relief to him. Here the order was passed on 26-12-1989. The conciliation proceeding took place on 28-5-1999. There should be convincing explanation. If there be none, this would be one of the factors for deciding the relief that has to be granted to the workman ultimately. Since the workman had admitted that he had received the charge sheet and the document exhibited as Exhibit M3 dated 26-4-1989. Therefore, the case of the workman that he did not know about the pending enquiry is incorrect. He had received the charge sheet and letter dated 26-4-1989. Could he deny that he did not know about the enquiry? The workman had stated that he did not receive letter dated 8-5-89 Exhibit M4 but admitted the acknowledgement bore his signature. In respect of letter dated 8-5-89 numbered as RO/ENO/6519. It was for the workman to explain what was tendered to him and why

did he acknowledge it. The contents of this letter indicate that workman was told through the Convenor of the Committee that he would be required to attend the enquiry. The statement of workman that he came to know about the report after considerable delay. The workman denied that he had filed appeal dated 20th July, 1995 (Marked as Exhibit E) to the statement of claim. He went to the length of saying that he had made a wrong statement in his affidavit that he had applied by the letter dated 15-2-90 a copy of the report of the enquiry committee. It appears that the workman was aware of the order of dismissal at least in the year 1990.

8. The workman has not been able to sustain the claim as stated by him in paragraph 13. The workman had received the charge sheet and that the Enquiry Committee was constituted. The only reason given by the workman for not attending the enquiry that workman was undergoing treatment. The enquiry paper shows that document Ex M4 dated 8th May, 1989 was received by the workman. The acknowledgement attached to that document bears his signature. The workman does not deny his signature. Therefore, the first date of hearing was known to the workman. It was 19th May, 1989. There is no explanation for non-appearance on 19th May, 1989. The enquiry committee adjourned the case to 9-10-1989 and 16-11-1989. Since the workman was absent, this notice were sent to his residential address by registered post. It is recorded by the committee that this notice was received by the workman. The workman has not challenged the veracity of this finding. The case was again adjourned for appearance of workman on 16-11-89. The workman did not appear on 16-11-89. It appears that the letter was not delivered. However, ex parte evidence was recorded on 16-11-1989. The enquiry was finally closed after recording the evidence on behalf of the company. The ex parte evidence was recorded against the workman was used for giving a finding. The workman had taken a specific plea that he was not aware about the date of appearance. He has taken a general plea that he was not aware of the enquiry proceeding. The workman was served with the charge sheet. He received the notice dated 8th May, 1989 Exhibit (M4) and 29th September, 1989 (Ex M5) stating the date of appearances. In the first notice, the date of appearance was 19th May, 1989 and in the letter dated 29-9-89 the date of appearance was 9th October, 1989. He, therefore, cannot say that he was not aware of the date of appearance. The third notice was also sent on the same address. In absence of specific plea it has to be presumed that the address was correct. The workman has neither pleaded nor proved that he was not living in the residential quarters on which the notice is sought to be served. The workman had not pleaded that he had informed the authorities of company that his residential address was changed. The burden of proof was on the workman to lead evidence showing sufficient cause for his non-appearance on 16-11-89. This tribunal is not impressed

by the argument that the workman was admitted in the hospital or that he had developed any occupational disease. The exhibit C dated 3-6-1989 given by Dr. Pathak of Dombivili (Not proved by examination of Doctor) shows that workman had an injury to right hand and advised rest between 23-5-89 to 3-6-89. He was fit to resume his duties on 4-6-89. Similarly, the document filed by the workman marked as Exhibits A and B relate to 1990. The certificate of Dr. Juliet Nathwani is dated 10th July, 1995 Exhibit D. It is regarding cure from alcoholism and not any occupational disease. The true facts are revealed by the documents filed by workman himself. The letter of workman dated 25-5-95 Ex. W4, Ex. W5, Ex. W7 and Ex. W8 do not show that problem was illness due to occupational disease. The workman was suffering from alcoholism. There is not an iota of evidence that workman suffered with any occupational disease in the year 1989. This tribunal cannot rely on unsubstantiated evidence. There appears to be no violation of principles of natural justice.

9. There is no argument advanced that finding are perverse. This tribunal has found that there was sufficient material before the Enquiry Officer for coming to the conclusion as he did. The workman himself has admitted that he was absent from duty.

10. It is also not in the interests of justice to interfere with the order of dismissal because of laches on the part of workman. He had raised the industrial dispute after a long period. This delay itself has affected the merits of this reference. There are no mitigating circumstances. The workman has not come with clean hands. He denied his own statements made by him in his own affidavit. He did not participate in the enquiry though he knew that it was pending against him.

11. Thus the tribunal holds that the enquiry against the workman was fair and proper. The findings are not perverse. This tribunal finds that there is no reason to interfere with the order of dismissal passed against the workman w.e.f. 26-12-1989 against the workman. Accordingly, this reference is answered by stating that the workman is not entitled to any relief as the order of dismissal is legal and justified?

S. C. PANDEY, Presiding Officer

नई दिल्ली, 24 सितम्बर, 2003

का.आ.2989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कुवैत एअरवेज कार्पोरेशन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, मुम्बई के पंचाट (संदर्भ संख्या 22/2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-9-2003 को प्राप्त हुआ था।

[सं. एल.-11012/17/2001-आई आर (सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 24th September, 2003

S.O. 2989.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 22/2002) of the Central Government Industrial Tribunal/Labour Court I, Mumbai now as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Kuwait Airways Corporation and their workmen, which was received by the Central Government on 23-9-2003.

[No. L-11012/17/2001-IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL No. 1,
MUMBAI**

PRESENT

SHRI JUSTICE S.C. PANDEY

Presiding Officer

REFERENCE NO. CGIT 22/2002

**Parties : Employers in relation to the management of
Kuwait Airways Corporation**

AND

Their Workmen

Appearances :

For the Management : Mr. Abhay Kulkarni, Adv.

For the Association : Absent

State : Maharashtra

Mumbai, dated the 5th day of September, 2003

AWARD

I. This is a reference under Section 10(1)(d) of Industrial Disputes Act, 1947 (the Act for short) read with section 2A of Section 10 of the Act made by the Central Government for adjudicating the industrial dispute between the parties to this reference in the following terms:

“Whether the demand of the Kuwait Airways Corp. Emp. Association from the management of Kuwait Airways Corporation, Mumbai to discuss and arrive at a negotiated settlement on issues of rationalization of Grades and designations, Wage Revision, revision of certain allowances like Travel, House Rent, Cash

handling, Upkeep, Provision of Uniforms etc. is just and fair? If so what directions are necessary in this regard?”

2. This tribunal has sent notices for appearance of the workman on 07-3-2003 then for 23-4-2003, 29-5-2003 and 04-7-2003. The workman was served on 11-8-2003. Again notices were sent to the Union representing the workman known as Kuwait Airways Corporation Employees Association, C/o J.O. Pinto, Hill View Apartments, 6th floor, 26, Marol, Andheri, Mumbai-59. In this notice it was stated that this tribunal may proceed ex-parte on 5-9-2003. The workman have not filed their Statement of claim and therefore the opposite party is not in a position to file a written statement to the Statement of claim. The Union is not taking any interest in proceeding. Further with this reference. In view of the conduct of the Union that it has not appeared before this tribunal on the date fixed by this tribunal in contesting this reference, this tribunal comes to the conclusion that the union is not interested in prosecuting this reference.

3. Accordingly, this tribunal answers the reference by saying that it appears that there is no such industrial dispute existing which has to be adjudicated upon by this tribunal. The reference is rejected.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

का.आ. 2990.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतांत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/अम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 7/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/134/2002-आई० आर० (बी-II)]

सी० गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2990.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 7/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 24-9-2003.

[No. L-12012/134/2002-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER SHRI S. M. GOEL

Case No. ID 7/2003

Sh. Krishan Kant Mittal S/o Sh. Gobind Ram Mittal, 3rd Crossing, St. No. 4, Gobind Nagar, Abohar, Distt. Ferozepur.

....Applicant.

V/s

The Regional Manager, UCO Bank, Regional Office, Sector-17, Chandigarh.

....Respondent

REPRESENTATIVES:

For the workman : Shri Surinder Garg

For the Management : Shri K. K. Garg.

AWARD

(Passed on 29th August, 2003)

1. The Central Government Ministry of Labour vide Notification No. L-12012/134/2002/IR (B-II) dated 10th December, 2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of UCO Bank in terminating the agency of Shri Krishan Kant Mittal S/o Sh. Gobind Ram Mittal, Ex-Deposit Collector w.e.f. 31-12-1997 is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

2. The workman made a statement that he withdraw the present reference in the Lok Adalat. In view of the statement of the workman, no dispute award is returned in the present case to the Ministry. Central Government be informed.

CHANDIGARH.

Dated : 29-8-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

का.आ. 2991.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको वेंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुवंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 6/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/137/2002-आई.आर. (बी-II)]

सौ. गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.6/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of UCO Bank and their workmen, received by the Central Government on 24-9-2003.

[No. L-12012/137/2002-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER SHRI S. M. GOEL

Case No. ID6/2003

Sh. Viney Setia S/o Sh. Ram Parkash, Street No. 2, Sindhu Nagri, Abohar, Ferozepur.

....Applicant.

V/s

The Regional Manager, UCO Bank, Regional Office, Sector-17, Chandigarh.

....Respondent

REPRESENTATIVES:

For the workman : Shri Surinder Garg

For the Management : Shri K. K. Garg.

AWARD

(Passed on 29th August, 2003)

1. The Central Government, Ministry of Labour vide Notification No. L-12012/137/2002/IR (B-II) dated 10th December, 2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Management of UCO Bank in terminating the agency of Shri Vinay Setia S/o Sh. Ram Parkash, Ex-Deposit Collector w.e.f. 31-12-1997 is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

2. The workman made a statement that he withdraw the present reference in the Lok Adalat. In view of the statement of the workman, no dispute award is returned in the present case to the Ministry. Central Government be informed.

CHANDIGARH.

Dated : 29-8-2003

S. M. GOEL, Presiding Officer

REPRESENTATIVES

For the workman : Shri Dhani Ram
 For the Management : Shri D.K. Chadha

AWARD

(Passed on 1-9-2003)

The Central Govt. Ministry of Labour vide Notification No. L-12012/18/2000/IR.(B. II) dated 5th June, 2000 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Central Bank of India in terminating the Services of Sh. Jagmohan Kamboj S/o Sh. Darshan Lal w.e.f. 21-3-1995 is just and legal? If not, what relief the workman is entitled to?”

2. In the claim statement it is pleaded by the workman that he was appointed as a peon at Barwala Branch w.e.f. 20-1-1975 and later on he was promoted as clerk after appearance of the internal test of the bank. While working at Indri Branch of the bank he was served with a charge sheet to which the workman replied and enquiry officer was appointed and the enquiry officer in his report proved the charges against the workman and the workman was discharged from the service. It is further pleaded that the enquiry conducted by the enquiry officer is not in accordance with the principle of natural justice and he was not allowed access to certain documents which were relied upon by the management and he was also not allowed to cross-examine the material witnesses and the enquiry officer has not given any weightage to the evidence led by the applicant. The appeal filed by the applicant was also dismissed without any reasons. The applicant thus prayed that the dismissal order be set aside and he be reinstated in service with all the consequential benefits and full backwages.

3. In the written statement the management has pleaded that the applicant was served a charge sheet; that he obtained employment in the bank as a peon by impersonating and using bogus certificates of under middle and date of birth belonging to some one else and thereafter continuing in the employment in the name of Shri Jagmohan son of Darshan Lal whereas he is neither Jagmohan nor the son of Darshan Lal. He concealed his actual identity with malafide and ulterior motives and continuously impersonating as Mr. Jagmohan son of Darshan Lal whereas his actual identity is Mr. Brij Mohan Son of Anand Sarup. The reply submitted by the applicant was found unsatisfactory and an enquiry was ordered which was held by J.C. Sachdeva. The management proved the charges during the enquiry proceedings and the workman was given full opportunity to defend himself during the enquiry proceedings and he was also allowed full and reasonable opportunity to cross-examine the witnesses of the

management and also to rebut the charges. During the proceedings before the enquiry officer the workman also filed a civil Writ Petition in the High Court which was also dismissed by the Hon'ble High Court. Before imposing the punishment the disciplinary authority also gave an opportunity of hearing to the workman and the disciplinary authority after considering the material on record awarded the punishment of discharged from Banks's service. The appeal of the applicant was also rejected after giving personal hearing. It is pleaded that the applicant got the service in the bank by impersonation. It is also proved that the enquiry was conducted in fair and proper manner. The applicant is thus not entitled to any relief in the present reference and the reference deserves rejection.

4. The management alongwith the written statement also placed on file the complete enquiry proceedings. The arguments were first heard on the fairness of the enquiry. The learned rep. of the workman has argued that the applicant was not given full opportunity to defend himself during the course of enquiry and the punishment was imposed without proper hearing to the applicant. The appeal was also rejected in the same fashion. On the other hand the learned counsel for the management has argued that the applicant was given full opportunity to defend himself. The Enquiry Officer conducted the enquiry in accordance with the principle of natural justice and the applicant was allowed access to all the documents and he was also allowed to cross-examine the witnesses of the management. He was also allowed to lead his evidence and the enquiry was conducted in fair and proper manner. It is further argued that the applicant got the job by fraud and impersonating himself as Jagmohan son of Darshan Lal whereas his actual name was Brij Mohan son of Anand Sarup. It is further argued that this fact has been proved during the enquiry therefore, the workman/applicant deserves no relief in the present reference.

5. I have gone through the entire enquiry proceedings and contentions of the rival parties. The learned rep. of the workman has not pointed out even a single instance where and in which way the workman was prejudiced. During the course of enquiry the workman failed to prove that he is Jagmohan son of Darshan Singh and for this reason the charge of impersonation was fully proved against the workman. On perusal of the enquiry file also it revealed that he was allowed full opportunity to defend himself during the course of enquiry and was also allowed to cross-examine the witnesses of the management. The enquiry is also detailed one and during the course of enquiry real Jagmohan was also produced by the management. It also revealed that the enquiry officer has conducted the enquiry in fair and proper manner in accordance with the principle of natural justice. The applicant was also served a show cause notice before inflicting the punishment and he was also allowed personal hearing when his appeal was rejected by the appellate authority. Therefore, taking into

consideration of all facts and circumstances of the case, it is held that the enquiry has been conducted in fair and proper manner and the workman has been given full opportunity to defend himself and there is no infirmity in the conduction of the enquiry.

6. The learned rep. of the workman has further argued that the workman was appointed on 20-1-1975 in the service of the bank and he has served the bank for about twenty years and therefore, this Tribunal should interfere U/S11A of the I.D. Act, 1947 in the matter of punishment as the punishment of removal is very harsh and disproportionate to the gravity of misconduct. I do not agree to the contention of the learned rep. of the workman. It is a matter of record that the workman obtained the appointment by fraud and impersonation. The applicant in the given circumstances does not deserve any lenient view in the matter of punishment. This Tribunal is not supposed to exercise its discretion in such fraudulent cases. Therefore, there is no merit in the contention of the learned rep. of the workman.

7. Taking into consideration all the facts and circumstances of the case and discussions made above, the workman is not entitled to any relief in the present reference and the reference is thus answered against the workman and in favour of the management. Central Govt. be informed.

Chandigarh

S. M. GOEL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

का.आ. 2994.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 5/2003) को प्रकाशित करता है, जो केन्द्रीय सरकार को 24-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/135/2002-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2003) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the industrial dispute between the management of UCO Bank and their workmen, which was received by the Central Government on 24-9-2003.

[No. L-12012/135/2002-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER

SHRI S.M. GOEL

Case No. ID 5/2k3

Sh. Bhupinder Singh Alias Shammi Monga S/o Sh. S.S.Monga, 4, Green Avenue College Road, Ferozepur.

....Applicant.

V/s

The Regional Manager, UCO Bank, Regional Office, Sector 17-B, Chandigarh.

....Respondent

REPRESENTATIVES:

For the workman : Shri Surinder Garg

For the Management : Shri K.K. Garg

AWARD

(Passed on 29th August, 2003)

The Central Govt. Ministry of Labour vide Notification No. L-12012/135/2002/IR (B-II) dated 10th December, 2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of UCO Bank in terminating the agency of Shri Bhupinder Singh Alias Shammi Monga, S/o Sh. Sudarshan Singh Monga, Ex-Deposit Collector w.e.f. 31-12-1997 is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

2. The workman made a statement that he withdraw the present reference in the Lok Adalat. In view of the statement of the workman, no dispute award is returned in the present case to the Ministry. Central Govt. be informed.

Chandigarh :

Dated : 29-8-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

का.आ. 2995.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 9/2003) को प्रकाशित करता है, जो केन्द्रीय सरकार को 24-9-2003 को प्राप्त हुआ था।

[सं. एल.-12012/136/2002-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2003) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of UCO Bank and their workmen, received by the Central Government on 24-9-2003.

[No. L-12012/136/2002-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH****PRESIDING OFFICER** SHRI S. M. GOEL**Case No. ID 9/2003**

Sh. Mukesh Kumar S/o Sh. Siri Ram, H. No. B-IV/1216
St. No. 2 Prem Nagar, Abohar, Ferozepur.

....Applicant

V/s.

The Regional Manager, UCO Bank, Regional Office,
Sector-17, Chandigarh.

....Respondent

REPRESENTATIVES:

For the workman : Shri Surinder Garg

For the Management : Shri K.K. Garg.

AWARD

(Passed on 29th August, 2003)

1. The Central Government Ministry of Labour vide Notification No. L-12012/136/2002/IR (B. II) dated 10th December, 2002 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Management of UCO Bank in terminating the agency of Shri Mukesh Kumar, Ex-Deposit Collector w.e.f. 31-12-1997 is legal and just? If not, what relief the concerned workman is entitled to and from which date?”

2. The workman made a statement that he withdraw the present reference in the Lok Adalat. In view of the statement of the workman, no dispute award is returned in the present case to the Ministry. Central Government be informed.

Chandigarh :

Dated: 29-8-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

का०आ० 2996.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल बैंक और इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रेणी न्यायालय, चंडीगढ़ के पंचाट (संदर्भ संख्या 90/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 24-9-2003 को प्राप्त हुआ था।

[सं. एल.-12011/287/2000-आई आर (बी-II)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2996.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the industrial dispute between the Management of Central Bank of India and their workmen, received by the Central Government on 24-9-2003

[No. L-12011/287/2000-IR (B-II)]

C. GANGADHARAN, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH****PRESIDING OFFICER** SHRI S. M. GOEL**Case No. ID 90/2001**

The General Secretary, All India Bank Staff Assn., 33-34, Bank Enclave, Ring Road, Rajouri Garden, New Delhi-110027.

....Applicant

V/s

The Regional Manager, Central Bank of India, Jawahar Market, Model Town, Rohtak 124001.

....Respondent

REPRESENTATIVES:

For the workman : Workman in person

For the Management : N.K. Zakhmi

AWARD

(Passed on 29th August, 2003)

1. The Central Government Ministry of Labour vide Notification No. L-12011/287/2001/IR (B-II) dated 22nd March, 2001 has referred the following dispute to this Tribunal for adjudication :

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH**
PRESIDING OFFICER SHRI S.M. GOEL

Case No. I.D. 104/93

Secretary, New Bank of India Employees Union C/o New Bank of India, Outer Dilla Road, Rohtak

....Applicant.

V/s

The Regional Manager, New Bank of India, Rohtak

....Respondent.

REPRESENTATIVES:

For the workman : Shri J. S. Rana

For the Management : Shri R. P. Mehal

AWARD

(Passed on 5th August, 2003)

1. The Central Govt. Ministry of Labour vide Notification No. L-12012/50/93-IR (B. II) dated 1st September, 1993 has referred the following dispute to this Tribunal for adjudication :

“Whether the claim of New Bank of India Employees Union that the management of New Bank of India was not justified in treating Shri Rajinder Singh Punia, Armed Guard, Jamal Branch as voluntarily abandoned the services with effect from 10-02-1992 and terminating his services with effect from that date is justified? What relief, if any, Shri Rajinder Singh Punia is entitled to?”

2. In the claim statement it is pleaded by the workman that his services were illegally terminated by the Regional Manager on 21-4-1992 under clause 14 of Bipartite Settlement which is in gross violation of mandatory provisions of para 522 (1) of the Sastri Award. The workman, therefore, prayed that he is entitled to be reinstated in service with full back wages and continuity in service, as the management has not complied with Section 25-F of the I. D. Act, 1947. I, therefore, the management is guilty of violation of Section 25-F of the I.D. Act and the workman is entitled to be reinstated in service with full back wages and other benefits.

3. In the written statement the management has pleaded that the applicant after obtaining station leave proceeded to his village and he was required to resume his duties on 17-6-1991 but neither he resumed his duties nor he submitted any information. Later on branch manager received a leave application alongwith a medical certificate but the medical certificate was not accepted by the bank. The workman was informed that he should submit the medical certificate from the C.M.O. But the applicant did

not submit any medical certificate nor resumed his duties. The applicant was advised vide registered letters to resume his duties within seven days failing which he will be proceeded in terms of the Bipartite Settlement. The applicant neither submitted any medical certificate nor resumed his duties. The management on 23-12-1991 sent a notice through registered notice to resume his duties within 30 days failing which he will be deemed to be voluntarily retired as per the provisions of the 5th Bipartite Settlement. In response to this notice the applicant joined his duties.

It is further pleaded that the applicant again absented from his duties from 10-2-1992 without submission of any information. The Branch Manager again advised him vide letter dated 5-3-1992 to report for duties and a second notice was also sent to him to resume duties within 30 days failing which it shall be concluded that he is not interested in service and shall be deemed to be voluntarily retired on expiry of 30 days time. This notice was received back undelivered as the applicant had refused to receive the notice. On the expiry of this 30 days notice the applicant did not report for duty and in view of this notice he was informed on 21-4-1992 received by the applicant on 4-5-1992 that as the workman failed to report for duty he was deemed to be voluntary retired. The action taken by the management is fully within the provisions of the 5th Bipartite Settlement and there was no question of holding any enquiry as the action has been taken under the provisions of the Bipartite Settlement. It is prayed that the action taken by the bank is justified and the workman is not entitled to any relief.

5. The applicant also filed rejoinder to the written statement reiterating the claim made in the claim statement.

6. In evidence the workman filed his own affidavit Ex-W1 and examined himself as W1. He admitted in cross-examination that he was served with the notice dated 21-4-1992 whereby he was treated as voluntary retired from the service of the bank. The management in rebuttal filed the affidavit of Mr. S. K. Batta who filed his affidavit Ex M1. During the course of the proceedings the management has also placed on the file the original letter which was refused by the workman.

7. Both the parties have filed written arguments to which I have gone through carefully and have also gone through the various authorities filed by the parties on record. In the written arguments the plea taken by the workman is that the workman could not join duty due to his illness and he had conveyed it from time to time and remained under the treatment of Dr. I. C. Lather and when the workman came to the bank to join service on 1-5-1992 his services were already deemed to be voluntarily retired from the service. In the written argument it has also been pleaded that the management has not complied with the provisions of the Section 25-F of the I.D. Act, 1947 and under the Provisions of Clause 17(c) of the 5th Bipartite

Settlement the management has retired the applicant from the service of the bank alongwith the written argument the Learned Counsel for the workman has also relied on the various authorities which are as under :

- (1) Uptron India Ltd. Vs. Shammi Bhan 1998 (2) SCT 169.
- (2) Prem Lal Vs. P.O. 2001(4) SCT 381.
- (3) PEPSU Road Transport Corporation Vs. P.O. 1994 (4) SCT 444.
- (4) Roop Narayan Shukla Vs. Industrial Tribunal Haryana 1997(3) LLN 669 and Hari Palace Ambala City Vs. P.O. Labour Court Rohtak 1979 (3) SLR 223.

8. On the other hand the Management in their Written Argument has pleaded that the services of the workman were treated as voluntary retired under the provisions of para 17 of Bipartite Settlement and Section 25-F of the I.D. Act is not attracted and the Authorities given by the workman are distinguishable as he himself choose not to attend the duty on his own and he had also refused to accept the notice dated 21-4-1992. The applicant has also not proved by any evidence on record that he remained under the treatment of any doctor during the period of his absence. The management also relied on the judgement of Hon'ble of Supreme Court Syndicate Bank Vs. General Secretary Syndicate Bank Staff Association reported in 2000 (5) Supreme Court 243 and Punjab and Sind Bank Vs. Sakatar Singh [JT 2000 (Suppl. 3) SC 450]. It is further argued on behalf of the management that the workman was not willing to join and serve the bank any more which is evident from his leaving the bank without any intimation and without getting the leave sanctioned. He was asked time and again to submit the medical certificate from the Chief Medical Officer but he never submitted the said certificate to the bank.

9. I have gone through the contention of the parties carefully and have also given a thoughtful consideration to the various authorities given by the parties. The applicant for the first time proceeded on station leave on 17-6-91 and he resumed his duties on 30-1-1992 when he was served with the notice of retiring him voluntarily and he again absented himself w.e.f. 10-2-92 without submission of any information. The branch manager advised him vide letter 5-3-1992 to join duties but the applicant never replied to this letter. He was served with 30 days notice under the 5th Bipartite Settlement under Registered A.D. failing which it would be presumed that he is not interested in bank service. This Regd. Letter was received undelivered with the postal remarks that the applicant refused to accept the same. Alongwith this letter the copy of the same was also sent through U.P.C. As the applicant did not report for duty within 30 days latest by 16-4-1992, he was deemed to be voluntarily retired from the bank service. The Hon'ble S.C.

in the Judgement Syndicate Bank Vs. General Secretary Syndicate Bank Staff Association (Supra) categorically held that when Bank Employee restoring to frequent unauthorised absence subsequently also employee remaining absent and show cause notice stating that if the employee does not report by specified date he would be deemed to have voluntary retired if served by post returned with remarks "refused". In the case in hand the applicant has refused to accept the Regd. letter as per the report of the postal authorities. He has also not reported for duty during the period in response to notice. He has not proved any thing on the record to show that he has sent any application to the management informing about his alleged illness. The Honble S.C. has further held that from the postal remarks on the notice and order when returned undelivered raised a clear presumption in favour of the Bank. Tribunal was not justified in giving relief based on the false edifice built by the employee. Undue reliance on the principles of natural justice by Tribunal as well as High Court resulted in miscarriage of justice bank was well within its rights to invoke provisions of Bipartite Settlement and treating the employee to have voluntarily abandoned his services. Held further that there is no need for the bank to hold any inquiry before passing the order treating him to have abandoned his services. Order of reinstatement set aside allowing Bank's appeal. In the case in hand the applicant absented from the bank without any intimation. Therefore, taking into consideration the fact and circumstances and following the Judgement of Hon'ble S.C. in the case of Syndicate Bank (Supra). It is held that the bank was not under any obligation to comply with the provisions of Section 25F and also to hold any enquiry, and the workman was rightly retired from the service of the bank under the Bipartite Settlement. The authorities cited by the Ld. Counsel for the workman is of no help to the case of the applicant. In a way the reference is answered against the workman and he is not entitled to any relief in the circumstances of the case. The Central Govt. be informed.

Chandigarh

Dated : 5-8-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 25 सितम्बर, 2003

कांगड़ा 2999.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुख्य पोर्ट ट्रस्ट के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 2, मुम्बई के संचाट (संदर्भ संख्या 2/12 ऑफ 2002) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2003 को प्राप्त हुआ था।

[सं. एल-31012/11/2001-आई आर (एम)]

सी. गंगाधरण, अवर सचिव

New Delhi, the 25th September, 2003

S.O. 2999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 2/12 of 2002) of the Central Government Industrial Tribunal-cum-Labour Court Mumbai-2 as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Mumbai Port Trust and their workman, which was received by the Central Government on 25-9-2003.

[No. L-31012/11/2001-IR (M)]

C. GANGADHARAN, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI**

PRESENT:

S. N. SAUNDANKAR Presiding Officer

Reference No. CGIT-2/12 of 2002

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF
MUMBAI PORT TRUST

The Chairman,
Mumbai Port Trust,
Shoorji Vallabhdas Road,
Ballard Estate,
Mumbai-400038.

Vs.

THERE WORKMEN

Shri Shivram Maruti Pawar,
New Patra Chawl No. 184,
R. No. 14, D.P. Wadi,
Chodapdeo Road,
Mumbai-400038.

APPEARANCES:

For the employer : Mr. M.B. Anchan, Advocate

For the Workmen : Mr. Jaiprakash Sawant,
Advocate

Mumbai, dated 26th August, 2003

AWARD

The Government of India, Ministry of Labour by its Order No. L-31012/11/2001/IR (M) dated 21-1-2001 in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Mumbai Port Trust, Mumbai in terminating the service of Shri Shivram Maruti Pawar Ex-Peon w.e.f. 4-1-2000 by way of removal from service is legal and justified? If not, to what relief the workman is entitled to?”

2. Workman Pawar was appointed as Hamal and thereafter as Peon in the Docks Department of Mumbai Port Trust w.e.f. 9-6-1992. vide Claim Statement (Exhibit-5) workman pleaded that he was attending his duty with sense of devotion and integrity, however, due to self illness and sickness of his mother and other family members he was constrained to remain absent from duty during the period from 10-11-1997 to 18-1-1999 and from 27-1-1999 to 15-7-1999. It is averred that workman had no intention to commit misconduct on absenteeism and despite that, he was given charge-sheet dated 3-6-1999 and domestic inquiry was conducted against him and the Inquiry Officer found him guilty and based on enquiry report, the Disciplinary Authority removed him from service w.e.f. 4-1-2000. It is contended that punishment of removal imposed on the workman is very harsh and therefore needs to be modified considering the extenuating circumstances he is facing, consequently workman contended to direct the management to reinstate him in service by modifying the order of removal.

3. Management Port Trust resisted the claim of workman by filing written statement (Exhibit-6) contending that workman was remaining absent unauthorisedly. He was warned for unauthorised absence of 252 days during the period 26-4-1983 to 11-11-1986 vide memo dated 12-6-1989. His two increments were withheld for unauthorised absence of 797 days during the period 1-1-1987 to 20-3-1990 vide memo dated 18-5-1992. His increment was withheld for one year for unauthorised absence of 1084 days during the period 21-3-1990 to 9-10-1994 vide memo dated 2-8-1995. His pay was reduced by two stages for a period of two years for unauthorised absence of 791 days during the period 10-10-1994 to 9-10-1997 vide memo dated 4-5-1998. It is averred that despite the warning and the imposition of penalties as above, workman did not show improvement and that he remained absent on various occasions from 10-11-1997 onwards which amounts to misconduct under Regulation 3(1A) of the Mumbai Port Trust Employees (Conduct) Regulations 1976 for which he was issued charge-sheet dated 3-6-1999. It is contended despite receiving the charge-sheet and giving sufficient opportunity, workman did not participate the inquiry therefore based on the evidence and the record Inquiry Officer found him guilty of committing misconduct and based on the report, the Disciplinary Authority imposed the penalty of removal from service on the workman however, he did not file appeal within time against the said order under the Regulation 22. According to management, workman had filed review petition however that was turned down by the Chairman on 6-10-2000. It is contended as per the principles of natural

justice inquiry was conducted and that the findings recorded by the Inquiry Officer since based on the evidence and record are not perverse. It is contended since workman by prolonged unauthorised absence created obstacle in the smooth working of the trust the punishment as imposed, is wholly adequate and from this context action of the management being legal and justified workman's claims be dismissed with costs.

4. On the basis of pleading issues were framed at Exhibit-7. In view of the purshis (Exhibit-8) all the issues were to be decided together consequently workman Pawar filed affidavit in lieu of Examination-in Chief (Exhibit-9) and closed oral evidence vide purshis (Exhibit-10). Management however did not lead oral evidence vide purshis (Exhibit-11). On perusing the record as a whole and hearing both the counsels, I record my findings on the issues for the reasons stated below:

Issue	Findings
1. Whether the domestic inquiry conducted against the workman was as per principles of natural justice?	Yes
2. Whether the findings of the Inquiry Officer are not perverse	Not Perverse
3. Whether the action of the management of Mumbai Port Trust, Mumbai in terminating the services of Shri Shivram Maruti Pawar, Ex-peon w.e.f. 4-1-2000 by way of removal from service is legal and justified?	Action is legal and justified.
4. What relief the workman is entitled?	As per order below.

REASONS

So far the domestic inquiry conducted against the workman, in cross-examination he clearly admits that he was given sufficient opportunity and that he had confessed his absenteeism from duty during the inquiry. Workman in his affidavit did not whisper that inquiry vitiates on any ground. He also did not point out as to how the findings recorded by the Inquiry Officer are perverse. His main grievance is that the punishment imposed upon him is harsh and hence needs to be modified under Section 11-A of the Industrial Disputes Act. On going through the record and the tests laid down by Their Lordship of the Apex Court in Sur Enamel and Stamping Works V/s. Their Workmen 1963 II LL J SCC 367 it is apparent that the domestic inquiry conducted against the workman, was as per the principal of natural justice and that findings are not perverse.

6. As regards punishment of removal imposed on the workman in so far as the action is concerned, it is stated by workman in affidavit (Exhibit-9) that the same is imposed without application of mind and without considering the pathetic condition of his family members. Admittedly workman was away from duty without sanctioned leave thereby, his absence was unauthorised which amounts to misconduct under the Service Regulations referred to above. Under Section 11-A of the Industrial Disputes Act, the scope of interference with punishment awarded by Disciplinary Authority is very limited. Their Lordships of the Supreme Court in Mithilesh Singh V/s. Union of India and Ors. 2003 SCC (L & S) 271 observed:

“It is for the employee concerned to show how the penalty is disproportionate to the proved charge and that unless the punishment appears to be shockingly disproportionate court cannot interfere with the same. Absence from duty without prior intimations is a grave offence warranting removal from service.”

7. In the case in had workman was found unauthorisedly absent for long period. Prior to this also many times he was warned and punished for the unauthorised absence. It is not that for the first time workman remained absent. From the admissions of the workman in cross-examination itself point out that he is habitual chronic absentee. Needless to say remaining absent from duty, work affects. As held by Their Lordships of the Apex Court in case of Mithilesh Singh referred supra, absence from duty without prior permission is grave offence warranting removal from service, workman being of chronic absentee does not deserve any sympathy. Consequently action of the management in imposing punishment of removal on the workman w.e.f. 4-1-2000 is legal and wholly justified. Workman is therefore not entitled to any relief. Issues are answered accordingly and hence the order:

ORDER

The action of the management of Mumbai Port Trust, Mumbai in terminating the service of Shri Shivram Maruti Pawar Ex-Peon w.e.f. 4-1-2000 by way of removal from service is legal and justified.

S.N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2003

का.आ. 3000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दी कैथोलिक सिरेन बैंक लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में लेबर कोर्ट, अर्नाकुलम के पंचाट [संदर्भ संख्या आई० डी० नं० 8/2001 (सेन्ट्रल)] को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2003 को प्राप्त हुआ था।

[सं. एल-12012/246/91-आई आर (बी-1)]

अहाजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. No. 8/2001(Central) of the Central Government Labour Court, Eranakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of The Catholic Syrian Bank Ltd. and their workman, which was received by the Central Government on 25-9-2003.

[No. L-12012/246/91-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

**IN THE CENTRAL GOVERNMENT LABOUR COURT,
ERNAKULAM**

(IN THE LABOUR COURT, ERNAKULAM)

(Friday, the 11th day of July, 2003)

PRESENT

Smt. N. Thulasi Bai., B.A., LL.B.,

Presiding Officer,

Industrial Dispute No. 8 of 2001 (Central)

Between

The Chairman, M/s. The Catholic Syrian Bank Limited,
Head Office, Trichur, Kerala

AND

The workman of the above concern represented by its
General Secretary, The Catholic Syrian Bank Staff
Association, Unity Building, Mannadiar Lane,
Trichur-1

Representations:—

Sri. B.S. Krishnan,
B. S. Krishnan Associates,
Advocates, . . . For Management
Kalias Annexe,
Warriam Road,
Cochin - 682016.

Sri. Ranjith Thampan,
Advocates,
Lakshmi, . . . For Union
Pulleppadi Cross Road,
Cochin-18.

AWARD

This reference was made by the Central Government as per Order No. L-12012/246/91-IR(B.I.) dated 3-4-2001. The dispute is between the Management of The Catholic Syrian Bank Ltd., and the Catholic Syrian bank Ltd., and

the Catholic Syrian Bank Staff Association. The dispute referred is:

“Whether the action of the management of M/s. The Catholic Syrian Bank Limited, Trichur in not giving any weightage to the 11 months' service put in by Shri. N. P. Francis in the cadre of sub-staff prior to his promotion and fixing his salary in the said date for drawing his increment in future is justified? If not, to what relief the said workman is entitled?”

2. Pursuant to notices issued from this court the union and management appeared through counsel.

3. The union filed a claim statement stating as follows:—

The dispute relates to the denial of giving weightage for service put in by Sri N.P. Francis in the cadre of sub staff prior to his promotion and fixing his salary in the clerical cadre w.e.f. 7-7-1983. The association had taken up the matter since it affects a large number of employees of the bank who get promotion from the cadre of sub staff to clerical. Sri N. P. Francis involved in the present dispute was appointed as sub staff in the bank on 12-8-1970 thereby his first increment date was on 12-8-1971. His annual increment date continued as 12th August for subsequent years also. While so he was promoted to clerical cadre w.e.f. 7-7-1983, that is just one month prior to his annual increment date of 12th August. According to the union since Sri N.P. Francis was in continuous service without any break he is entitled to his annual increment in the clerical cadre on 12-8-1983. But he was not granted annual increment due on 12-8-1983 but he was given increment on 7-7-1984 that is one year after the date of promotion in the clerical cadre. Thus because of the promotion he got the next increment only after 23 months, that is on 7-7-84. Aggrieved by the above denial of increment for a period of 11 months Sri. Francis informed the union about the same. Accordingly the union made a representation before the Chairman of the Bank on 18-10-1989. Bank took a stand that as per the norms for fitment of salary while on promotion from subordinate cadre to clerical, there is no necessity to pay the annual increment in the lower cadre. Though conciliation was held by the Assistant Labour Commissioner, Ernakulam it ended in failure and accordingly failure report was sent on 30-7-1991. The all India industry wide biparte settlement which covers the entire service conditions of award staff does not mention any change in date of increment on promotion. So there is no scope for effecting such a change of date of increment on promotions. The variation of pay scale and refixation of salary on promotion and grant of additional increment are consequences of promotion and they will not in any way affect the continuity of service and date of annual increment. In the case of Sri. K. Vijayan who was similarly promoted from sub staff to

clerical cadre it was clarified by the bank that the date of annual increment will not be changed because of refixation of the salary. So according to the union the management is bound to give Annual increment to Sri N.P. Francis on 12-8-1983 irrespective of his promotion and to continue the same date for subsequent annual increment thereby an award to be passed accordingly.

4. Management filed a written statement raising the following contentions.—The reference and adjudication thereon are unsustainable in law. The management is a scheduled commercial Bank and the service conditions of its employees are governed by awards, bipartite settlements and policy decisions of the managements. The union raised the dispute claiming weightage of service for 11 months in the year 1983 in respect of Sri. N.P. Francis. The dispute is a stale one and its adjudication at this distant time will adversely affect industrial discipline and morale of the other employees and the general administration of the bank. The union and the workman had no grievance for 8 years and the Central Government as per order dated 20-8-1991 ordered that the dispute is not fit for reference. Thus it is clear that the union has raised the dispute without any basis or *bona fides* only on experimental basis. Sri. N. P. Francis, the workman involved in the dispute was employed as a peon w.e.f. 12-8-1970. He was given annual increments on 12-8-1971 on completion of one year service in that post. He was drawing a basic pay of Rs. 354/- as peon w.e.f. 12-8-1982 in the time scale of pay. While so he was promoted as clerk-cum-cashier as per order dated 28-6-1983 with specific instruction to join duty at the promoted post w.e.f. 11-7-1983. It was made clear in the order that he was eligible to draw basic-pay of Rs. 455 in the time scale pay of clerks with allowances admissible to that post w.e.f. the date of joining in the promoted post and his next increment in the promoted post will due on the first annual date of joining duty in the promoted post that is w.e.f. 11-7-1984. Mr. Francis accepted the promotion order and joined duty in the promoted post without any complaint. Subsequently the service conditions were revised w.e.f. 23-11-83 as per circular of the same date by which an additional increment in the clerical cadre was given to the promotees as clerk from subordinate staff. The benefit of the above circular was extended to the workman and others promoted along with him as per circular dated 2-12-1983. There is no basis for claiming annual increment by the workman before completing one year of service in a post. The total emoluments of the workman were not at all reduced on promotion, but increased considerably. The management has not made any change to the service conditions of the workman Sri. N.P. Francis which is covered by the bipartite settlement increment has granted to an employee on a time scale pay attached to the post, which he is holding. Scale of pay and increment amount for each post are different. In fact there was no complaint by any of the employees or

their unions in respect of the refixation and change of date of increment on promotion. There is no case for the present employee that his junior is drawing higher pay than him due to fixation of pay on promotion. No anomaly has been occurred in fixation of pay of Sri. N.P. Francis on promotion. So the management prays for passing an award upholding the action of the management.

5. No rejoinder was filed by the union thereafter.

6. Evidence adduced from both sides which consists of the testimony of the union secretary as WW1 and one witness for the management as MW1 and Exts W1 to W4 and M1 to M17.

7. Thus the points arise for determination are :

1. Whether the reference is maintainable?

2. Whether the workman Sri. N.P. Francis involved in the present case is entitled to get any relief as per the reference? If so, what is the relief?

8. Point No.1: This reference is seen raised by the Catholic Syrian Bank Staff Association in respect of relief which arose in 1983. Admittedly the union raised a dispute in that respect only in 1989. This is why the Central Government at the first instance declined to make a reference in reply to the dispute as per Ext. M9 dated 20-8-1991. It was opined by the Central Government in Ext. M9 that '*Prima facie* it would appear that dispute does not subsist. In addition, matter has been raised belatedly after 7 years. In the written statement filed by the management it is contended that the dispute is a stale one and so no adjudication is permitted at this distant time as it will adversely affect industrial discipline and morale of the other employees and the general administration of the bank. But from the reference order it is evident that the Central Government to reconsider the question once again under Section 10 of the Industrial Disputes Act for adjudication. So the maintainability of the reference on the ground of delay in making the reference cannot be considered as a preliminary point. At the same time it can be taken into account while considering the *bona fides* of the claim made by the union. Thus it cannot be found under this point that the reference is not maintainable which follows that the reference is maintainable.

9. Point No. 2 : The question to be determined under this point is that whether Sri. N.P. Francis the workman involved in the present case is entitled to get any relief as per the reference. Before considering the disputed aspects the admitted factors can be referred. Admittedly Sri N.P. Francis, the workman involved in the present case, joined the service of the management bank on 12-8-1970 as a peon in the sub staff cadre. His annual increment date continued as 12th August till 12-8-1982. He was promoted to the clerical cadre w.e.f. 7-7-1983, that is just one month prior to his annual increment date in the subordinate cadre. He

joined as clerk on 11-7-1983, his salary was fixed in the promoted post and his annual increment date was also changed from 12-8-83 to 7-7-1984, that is on completion of one year in the promoted post. Along with Sri N.P. Francis 9 others were also promoted to the clerical cadre from the sub staff cadre who were all given pay fixation in the same way and their increment dates were also changed from the date of entry into service to the date of promotion. None of the promotees including the present workman raised any objection in that regard and they accepted the payment as per the pay fixation in the promoted scale and accepted increment also till the union filing the original of Ext. W1 before the management on 18-10-1989.

10. What can be gathered from Ext. W1 and also from the Claims narrated in the claim statement filed before this court is that Sri Francis was not given any weightage or rather increment for a period of 11 months in the subordinate post as the promotion was just one month prior to his annual increment date in August, 1983. The union points out the case of one K.Vijayan who was promoted to the clerical cadre from sub-staff as early in 1978 to substantiate that in his case the date of annual increment was not changed because of refixation of the salary. But the stand taken by the management is that the management being a Scheduled Commercial Bank the Service conditions of its employees are governed by Awards, Bipartite settlement and policy decisions of the management. In respect of the employee, Sri N.P. Francis, who got promotion to clerical cadre from sub-staff was given refixation of pay and change of increment date to the date of promotion, against the date of entry into service, as done in the case of other employees who were similarly promoted and no increment or weightage for the period of 11 months in the cadre of sub-staff before promotion can be granted to the workman as annual increment falls due only on completion of one year service. In the case of Sri. Vijayan referred in the claim statement also similar stand was taken and there can be no discrimination in respect of similarly placed employees thereby no relief can be granted to Sri N. P. Francis on the ground of 11 months service in the sub-staff category prior to promotion.

11. As referred earlier from the nature of the claim raised by the union itself it is evident that the union actually wants discrimination in respect of Sri. N.P. Francis on the ground that he was promoted to the clerical cadre just one month prior to his annual increment date in the sub-staff category. That can be gathered from the nature of allegation included in para 6 of the claim statement that if a sub-staff is having the date of annual increment as June every year and if he is promoted to the clerical staff in the month of July the annual increment of the said employee on the clerical cadre that is on the date of promotion will come in next June thereby he who had drawn annual increment in the month of June immediately prior to his promotion will

be granted increment in July next year so that his increment will be delayed only by one month. Thus it is clear that in the present reference the union's concern is about the grievance of Sri. N.P. Francis alone and it has not taken into account the other employees who are getting increment in the promoted post with a delay of one month as pointed out. Thus the union is treating similarly placed employees differently basing on the change of date of promotion. As pointed out by the management. The management being a Scheduled Commercial Bank the service conditions of its employees are governed by Awards, Bipartite settlements and policy decisions of the management. The union has no case that there exists an award, bipartite settlement or policy decision in respect of grant of weightage or increment for a lesser period than one year of completion of service. The union was not able to point out any Award, Bipartite settlement or circular by way of policy decision to substantiate that the date of entry into service will continue as the date of increment in the promoted post also irrespective of date of promotion. It is admitted by the Union Secretary as WW1 that though his date of entry into service was in January 1971 his present increment date is September and his explanation in that respect is that he used to take loss of pay leave in connection with union activities and the increment date will change accordingly. So also he is a person who is not attending promotion tests and so he still continues in the clerical cadre in the seniority post. The above version of WW1 shows that the date of entry into service will continue as the date of increment in all circumstances and it will be changed according to changed circumstances. The union has no case that there was reduction in the salary of Sri. Francis on his promotion and it was admitted by WW1 that the basic pay of Sri. Francis was changed as Rs. 455 in the clerical cadre w.e.f. 11-7-83 against the basic pay in the sub-staff cadre with increment as on 12-8-1983 and the increment rate of sub-staff was Rs. 12 whereas that of the clerk was Rs. 30 In para (1a) of Ext. W3 it is made clear how fixation of pay has to be made on promotion of sub-staff to clerical cadre. Though the above circular came into effect on 23-11-83 its benefit was extended to Sri Francis and others who were promoted along with him and accordingly refixation of his salary was made on 15-3-1984 as per Ext. M5. On promotion Sri. Francis was transferred to Karror at Tamil Nadu from Trivandrum. Then Sri. Francis made Ext. M6 representation to the management for protecting his C.C.A. by way of adjusting amounts which was allowed by the management as per Ext. M7. Ext. M10 series are the photo copy of pay fixation order and pay statements in respect of the 9 persons who were promoted along with Sri. Francis. It is evident from Ext. M10 series that all the 9 promotees were given fixation in the promotion post and the date of increment was changed accordingly as done in the case of Sri. Francis. Ext. M11 is the proceedings by which Sri. K. Vijayan was appointed as Peon in the Koduvayoor branch of the management w.e.f. 23-11-1958. Ext. M12 is the increment sanction order of the above stated Vijayan on 23-11-68 and M13 is the increment sanction order on

23-11-69. He was promoted in the clerical cadre on 3-6-70. Thereafter his date of increment was changed as 3/6 is evident from Ext. M15 pay fixation and increment statement for the period from 3-6-71 to 3-6-77. Ext. M16 is the refixation statement in respect of Sri. Vijayan w.e.f. 1-1-1978. It is made clear in Ext. M16 that his annual increment date will not be changed because of the refixation of salary w.e.f. 1-1-78. Ext. W4 is the copy of Ext. M16. Ext. W4 is relied by the union to point out that the annual increment date of Sri. Vijayan was not changed on his promotion from the sub-staff cadre to clerical cadre. But by considering Ext. M15 and M16 it is clear that the increment date of Sri. K. Vijayan was changed to 3/6 from January, the date of entry into service, on promotion. Though a refixation of salary was given w.e.f. 1-1-1978 due to bipartite settlement dated 1-1-71 and as per Ext. M16 corresponding to Ext. M4 it is informed that the annual increment date will not be changed from 3/6 because of the refixation w.e.f. 1-1-87. Thus it is clear that Sri. K. Vijayan referred in the claim statement was also treated similarly with Sri. N.P. Francis on promotion to clerical cadre from sub-staff cadre. Thus from the evidence adduced from both sides it is clear that there exists no circular, Award or Bipartite settlement or precedents which entitles the workman Sri. N.P. Francis to get weightage or increment on the date of annual increment in the sub-staff cadre and Sri. N.P. Francis, the employee involved in the present reference, is treated similarly with the employees who were promoted from the sub-staff cadre to clerical cadre thereby the workman is not entitled to get any relief as per the reference, part answered accordingly.

In the result an award is passed finding that the action of the management of M/s The Catholic Syrian Bank Ltd., Trichur in not giving any weightage to the 11 months service put in by Sri. N. P. Francis in the cadre of sub-staff prior to his promotion and fixing his salary in the clerical cadre w.e.f. 7-7-1983 and also reckoning the said date for drawing his increment in future is justified and he is not entitled to get any relief as per the reference.

This award will take effect one month after its publication in the official Gazette.

Dictated to the Confidential Assistant, transcribed and typed out by her, corrected by me and passed this the 11th day of July, 2003.

Earnkulam.

N. THULASI BAI, Presiding Officer

APPENDIX

Witness Examined on the side of the Management:—

MW1 — Vasudevan

Witness examined on the side of the workman :—

WW1 — Sri. M.P. Paul

Exhibits marked on the side of the Management :—

- Ext. M1 — Photo copy Circular No. 251/79/BC/S/38 dated 27-11-79.
- Ext. M2 — Photo copy of Transfer certificate issued to the workman on transfer to zonal office dated 15-12-1982.
- Ext. M3 — Photo copy of circular No. 88/83/C/9/19 dated 20-5-83.
- Ext. M4 — Photo copy of letter dated 28-6-83 issued to the Zonal Assistant General Manager from Head office copy to the workman.
- Ext. M5 — Photo copy of letter dated 15-3-85 to the workman.
- Ext. M6 — Photo copy of letter dated 25-1-85 of the workman to the Management.
- Ext. M7 — Copy of letter dated 11-4-95 of the Management to the Manager of Kannur Branch.
- Ext. M8 — Copy of letter No. S/PRIO/1055/91 dated 21-2-1991 of the Management to the ALC(C).
- Ext. M9 — Photo copy of letter No. L-12012/24691-TR(B.M) dated 20-8-1991 of the Government of India, Labour Department.
- Ext. M10 — (Series 8 in Nos) :—Copy of letter dated 28-6-1983 of the Bank regarding fixation of pay on promotion to Mr. P. A. Jose with fixation statement.
- Ext. M10(a) — Copy of letter dated 28-6-1983 of the Bank regular fixation of pay on promotion to Mr. P.C. Poulose.
- Ext. M10(b) — Copy of letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. P. C. Antony.
- Ext. M10(c) — Copy of letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. N. P. Paul.
- Ext. M10(d) — Copy of letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Bestin Jose, K. A.
- Ext. M10(e) — Copy of letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. K. A. Devis
- Ext. M10(f) — Letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. V. R. Justin.
- Ext. M10(g) — Letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. Joseph Chandy.
- Ext. M10(h) — Letter dated 28-6-1983 of the Bank regarding fixation of Pay on promotion to Mr. M. T. Krishnankutty.

Ext. M11 —Copy of proceedings No. 69/58 D/28-11-1958 of K. Vijayan.

Ext. M12 —Copy proposal regarding increment to K. Vijayan dated 23-11-1965.

Ext. M13 —Copy of letter dated 19-11-1969 issued to Mr. Vijayan fixing his pay as on 23-11-1969.

Ext. M14 —Copy of letter dated 13-7-1978 issued to the Manager, Thrissur.

Ext. M15 —Photo Copy of fixation statement of Mr. Vijayan consequent on pension of wage scale w.e.f. 1-1-1970.

Ext. M16 —Photo Copy of letter dated 29-9-1978 issued to Mr. Vijayan refixing pay w.e.f. 1-1-1978.

Ext. M17 —Photo copy of Transfer Certificate of Sri. K. Vijayan dated 4-6-1984.

Exhibits marked on the side of the workman

Ext. W1 —Copy of letter dated 18-10-1989 issued by the Union to the Chairman, Catholic Syrian Bank Limited.

Ext. W2 —Copy of letter issued by the Management to the Asstt. Labour Commissioner (Central) dated 21-2-1991.

Ext. W3 —Copy of Circular No. 221183/SC/S/38 dated 2-12-83 by the Management Bank.

Ext. W4 —Photo copy of staff clerical salary fixation of Sri K. Vijayan dated 29-10-79.

नई दिल्ली, 26 सितम्बर, 2003

का. आ. 3001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई. डी. नं. 61/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2003 को प्राप्त हुआ था।

[सं. एल- 41012/151/97-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 61/98) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 25-9-2003.

[No. L-41012/151/97-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

**CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH**

PRESIDING OFFICER: SHRI S. M. GOEL

Case No. ID 61/98

Sh. Vijay Pal,
House No. 114, Daddu Majra Colony,
Chandigarh-160017.

.....Applicant

V/s.

Divisional Railway Manager,
Northern Railway
Ambala Cantt.-133001.

.....Respondent.

REPRESENTATIVES

For the workman : None.

For the management : Sh. N. K. Zakhmi.

AWARD

(Passed on 1-9-2003)

The Central Government Ministry of Labour vide Notification No. L-41012/151/97-IR (B-1) dated 9th March, 1998 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Divn. Railway Manager, Northern Railway, Ambala and In-Charge, City Reservation Centre, ISBT, Chandigarh, in terminating the services of Shri Vijay Pal, Safai Worker, w.e.f. 3-8-96 is legal and justified? If not, to what relief the workman is entitled and from which date?”

2. None appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Government for want of prosecution. Central Government be informed.

S.M. GOEL, Presiding Officer

CHANDIGARH

Dated : 1-9-2003

नई दिल्ली, 26 सितम्बर, 2003

का. आ. 3002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई. डी. नं. 233/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2003 को प्राप्त हुआ था।

[सं. एल- 41012/24/99-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 233/ 99) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workman, which was received by the Central Government on 25-9-2003.

[No. L-41012/24/99-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER: SHRI S. M. GOEL

Case No. ID 233/99

The Divisional Secretary,
Uttar Railway Karamchari Union,
A.C. Kapoor Ahata, Ambala Cantt.
(Haryana) 133001.

.....Applicant

V/s.

Divisional Railway Manager,
Northern Railway,
Ambala Cantt. (Haryana) 133001.Respondent

REPRESENTATIVES

For the workman : None.

For the management : Sh. N. K. Zakhmi.

AWARD

(Passed on 1st September, 2003)

The Central Government Ministry of Labour vide Notification No. L-41012/24/99-IR (B-I) dated 26th October, 1999 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the Divisional Railway Manager, Northern Railway, Ambala Cantt. in denying the demands dated 14-1-97 of Uttar Railway Karamchari Union (Regd.), Ambala Cantt. as in Annexure ‘D’ attached is just and legal ?”

2. None appeared on behalf of the workman. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Government for want of prosecution. Central Government be informed.

S.M. GOEL, Presiding Officer

CHANDIGARH
Dated : 1-9-2003

नई दिल्ली, 26 सितम्बर, 2003

का. आ. 3003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतात्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई. डी. नं. 86/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-9-2003 को प्राप्त हुआ था।

[सं० एल- 12012/124/95-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 86/96) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 25-9-2003.

[No. L-12012/124/95-IR (B-I)]

AJAY KUMAR, Desk Officer.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER: SHRI S. M. GOEL

Case No. ID 86/96

Sh. Duli Chand C/o Deputy General Secretary,
State Bank of India Staff Congress,
Near Pandhi Tent House Prem Nagar,
Jail Road, Rohtak-124001.Applicant

V/s.

Deputy General Manager,
State Bank of India,
Zonal Office, Haryana,
Sector 8-C, ChandigarhRespondent.

REPRESENTATIVES

For the workman : Shri J. G. Verma

For the management : Shri Ajay Kohli.

AWARD

(Passed on 27-8-2003)

The Central Government Ministry of Labour vide Notification No. L-12012/124/95-IR (B-I) dated 6th

September, 1996 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of SBI in terminating the services of Duli Chand w.e.f. 15-7-93 is just, fair and legal? If not, what relief the workman is entitled and from what date?”

2. In the claim statement it is pleaded by the applicant that he was employed as water boy by the Chief Manager, Rewari branch and he was designated as canteen boy and was paid the fixed wages at monthly rates. He was also compensated by paying additional bills from petty cash for performing other petty jobs. He was also required to serve drinking water to the employees after serving tea in the morning at 8 A.M. and also in the evening after 4 P.M. The applicant was paid Rs. 400, till 16-9-1989 and after that the wages were increased to Rs. 1000/- PM. The services of the workman were terminated on 15-7-1993 after about six years and had completed 240 days of service in one calendar year before the termination of his services. It is further pleaded that no notice or notice pay was given to the workman and he was also not paid any retrenchment compensation. The applicant prayed that the workman be reinstated in service with all benefits and full backwages.

3. The management in the Written Statement denied that the applicant was appointed by the Management. It is pleaded that the applicant was engaged as Canteen Boy by the Local Implementation Committee (hereinafter referred to as LIC). He was paid wages by the LIC and the applicant was never engaged by the Bank and there was no privity of contract between the bank and the employee. It is also pleaded that the applicant is not a workman and the Management prayed for the rejection of the reference.

4. In evidence the applicant filed his own affidavit Ex. W1 and document Ex. W2. He also produced WW2 Khazan Singh who filed his affidavit Ex. W3. The applicant also produced WW3 Amar Singh who filed his affidavit Ex. W4. In rebuttal the Management filed the affidavit of H. R. Arora Ex. M1 who also proved document Ex. M2. The applicant in cross-examination has admitted that he used to prepare the Tea and serve the same and he was engaged by the Branch Manager Mr. C. R. Gupta. He also admitted that he did not mark his attendance in any Register. WW2 Khazan Singh admitted in his cross-examination that the Canteen was run by the LIC at Rewari Branch and Canteen Boy is normally appointed by the Branch Manager.

5. I have heard Learned counsel for the parties and have also gone through the evidence and record of the case.

6. The Ld. Counsel for the workman has argued that the applicant served the management for about six years and he had also completed 240 days of service immediately before his termination in one calendar year. The Management at the time of termination has not given any

notice, notice pay and retrenchment compensation, therefore, the workman is entitled for reinstatement with full backwages. The Ld. Counsel for the workman has also drawn my attention to the letter Ex. W2 dated 16-7-1993 which is on the official pad of State Bank of India whereby the Chief Manager has asked the applicant in reference to letter LIC/1993, 1994/I dated 12-7-1993 that his services are terminated w.e.f. 15-7-93 and he should return the property of the bank to the management. The Ld. Counsel for the workman argued that this is a letter from the management which shows that the applicant was the employee of the Bank.

7. On the other hand the Ld. representative of the Management has argued that the letter Ex. W2 itself reveals that the Chief Manager in the capacity of President of the LIC has written the letter Ex. W2 and the reference of LIC was there in the letter dated 12-7-1993. Moreover it is also pleaded that the applicant was not issued any appointment letter by the bank and there was no privity of contract between the applicant and the management. The learned rep. of the management also relied on the judgement of the Hon'ble Supreme Court in the case of State Bank of India and Others Vs. State Bank of India Canteen Employees Union reported in 2000(2) R.S.J. 528.

8. I have gone through the rival contentions of the parties and have also gone through the case laws submitted by the parties. The applicant has not produced any letter of appointment or any other document to prove that he was the employee of the management. The management produced on the record the document Ex. M2 which is Staff Welfare Fund whereby the L.I.C. was created for the welfare of the employees of the bank. At the branch Level the branch manager is the President of the L.I.C. and in the capacity of President of LIC he may have engaged the applicant which itself creates no liability on the bank management and the applicant was also disengaged by the Chief Manager who was the President of Local Implementation Committee. The Hon'ble Supreme Court in the case of State Bank of India case (Supra) categorically held that the bank has no statutory or contractual obligation or obligation arising under the Award to run such canteen. The canteen boys engaged by the President of the LIC are not the employees of the State Bank of India. The letter Ex. W2 creates no relationship of employee and employer between the applicant and the management of State Bank of India. The local implementation committee gets subsidy from staff welfare funds. Canteens in branches are run with the contribution made by the staff members for the purchase of raw material by the committee. Rules have been framed by the management for the functioning of LIC. Staff Welfare Funds consists of subsidy sanctioned by Executive Committee of Central Board of the Bank. Rule 10(a) of Staff Welfare Funds provides that wherever canteen employees are engaged by the LIC, their wages in excess of subsidy will have to be borne by the committee. Taking into

consideration these facts, it is evident that the applicant was appointed by the LIC and he was not under the direct control of the management and, therefore, it is held that the applicant was not the employee of the management but he was the employee of the LIC. Therefore, the applicant can not and have no right to invoke the provisions of Section 25-F of the I.D. Act, 1947 against the bank management as these are not attracted in the case of the applicant.

9. In view of the discussion made above, it is held that there was no relationship of employer and employee between the applicant and the management and the action of the management of SBI in terminating the services of the workman w.e.f. 15-7-1993 is fully legal and justified and the applicant is not entitled to any relief in the present reference. The reference is thus answered against the applicant. The Central Govt. be informed.

Chandigarh.

27-8-2003.

S.M. GOEL, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2003

का.आ. 3004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डेवलपमेंट क्रेडिट बैंक लिमिटेड के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-2, मुम्बई (रुप पंचाट (संदर्भ संख्या सीजीआईटी-2/173/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2003 को प्राप्त हुआ था।

[सं. एल-12012/20/99-आई आर (बी-1)]

अ. राज्य कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/173/1999) of the Central Government Industrial Tribunal No. 2, Mumbai, 2003 as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Development Credit Bank Ltd. and their workmen, which was received by the Central Government on 25-09-2003.

[No. L-12012/220/99-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESIDENT

S.M. GOEL

Presiding Officer

Reference No. CGIT-2/173 of 1999

EMPLOYERS IN RELATION TO THE MANAGEMENT OF DEVELOPMENT CREDIT BANK LIMITED, MUMBAI

The Managing Director,
Development Credit Bank Limited,
Central Administrative Office,
204, Raheja Centre,
Nariman Point,
Mumbai-400 021.

V/s.

THEIR WORKMEN:—

Mr. Ramesh Ratnakar Kaple,
Asha Niketan Room No. 6,
Mannala Tank Road,
Mahim,
Mumbai-400 016.

APPEARANCES:—

For the Employer	:	Mr. R.N. Shah, Advocate.
For the Workmen	:	Mr. Jaiprakash Sawant, Advocate.

Mumbai, dated 19th August, 2003.

AWARD

PART-II

By the Interim Award dated 3rd December, 2002 this Tribunal held that the domestic inquiry conducted against the workman Kaple was as per the Principles of natural justice and the findings of the inquiry officer are not perverse, consequently the only issue Nos. 3 and 4 as to whether the punishment of dismissal imposed on the workman is legal and justified, in the context of the action of the management remains for the consideration and my findings for the reasons are as follows :

Issue	Findings
1. Whether the action of the management in dismissing the services of Ramesh Kaple, Ex-Head Cashier w.e.f. 14-1-1997 is legal and justified ?	Legal and Justified.
2. If not, to what relief the workman concerned is entitled to ?	As per order below.

REASONS

2. Workman was dismissed by the management Bank based on the proved charge of fraud and dishonesty. Both the parties vide purshis (Exhibit-32) did not lead oral evidence in so far as the action of punishment is concerned. By the said purshis counsel for the workman Shri Sawant pointed out that workman has expired, therefore question of his reinstatement does not stand to reason. In fact, as per the recent case law in *Mithilesh Singh V/s. Union of India & Ors. 2003 SC L&S 271* it is for the employee concerned to show how the penalty imposed on him was disproportionate to the proved charge and further there Lordships ruled that the scope of interference with the punishment awarded by the Disciplinary Authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same. In this view of the matter punishment of dismissal imposed on the workman can safely said to be proportionate to the proved charge. Consequently action of the management is perfectly legal and justified and since the workman expired, on merits, action of the management being legal and justified, claim stands dismissed and hence the order :

ORDER

Reference stands dismissed.

No order as to costs.

S. N. SAUNDANKAR, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2003

का. आ.3005.—औद्योगिक विवाद अधिनियम, 1947 (1947 की 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नीदर्न रेलवे के प्रबंधत्रय के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर फोर्म, चंडीगढ़ के पंचाट (संदर्भ संख्या आईडी-नं. 150/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2003 को प्राप्त हुआ था।

[सं० एल- 41011/8/90-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 150/90) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 25-09-2003.

[No. L-41011/8/90-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, CHANDIGARH

PRESIDING OFFICER

Shri S. M. Goel

Case No. I. D. 150/90

Roshan Lal,
Fitter,
Northern Railway,
House No. 3888,
Near City Post Office,
Jagraon,
Distt. Ludhiana-141001
...Applicant

V/s.

1. General Manager,
Northern Railway,
Baroda House,
New Delhi-110001
2. Divisional Railway Manager,
Northern Railway,
Ferozepur Cantt-152001
...Respondent

REPRESENTATIVES:

For the workman : Sh. B. N. Sehgal
For the management : Sh. P. P. Khorana

AWARD

(Passed on 3-9-2003)

The Central Govt. Ministry of Labour vide Notification No. L-41011/8/90-I.R. (D.U.) dated 24th October, 1990 has referred the following dispute to this Tribunal for adjudication :

“Whether the following demands of All India Loco Running Staff Association, Ferozepur Division branch Ludhiana are justified? If yes, what relief the concerned workmen are entitled to and from what date?

Demand No. 1 : Grant of authorised scale of pay to the following casual employees on completion of 120 days of service as per the Railway Board's Order No. PC-72/RLI-0913(1) dt. 12-7-1973.
: S/Sh. Roshan Lal
Jaswant Singh
Tarsem Lal
Gurdev Chand
Gurmel Singh
Jaipal Singh
Beas Ram
Nirmal Singh
Sarup Singh
Darshan Singh

Demand No. 2 : The services of the above 10 workmen may be regularised in their present status, i.e. last 3 posts as they were initially recruited as Artisan which was class III post.

Demand No. 3 : All the above 10 workmen may be upgraded without subjecting them to screening test as per the criteria laid down for Class III Artisans.

Demand No. 4 : All the concerned workmen may be regularised against 25% departmental promotion quota.

2. In the claim statement the applicants pleaded that they are working with the management in class III post but they were granted regular scale when they were de-casualised and from that very date they were given increments. They were performing the same duties as were being performed by their other colleagues in class III post on regular basis. Therefore, they are entitled to be paid the same wages as being paid to the regular employees and also entitled for other benefits. In the similar case of Sh. Mohinder Singh S/o Sh. Sohan Singh he was paid regular scale from the date of his first appointment which was not done in the case of applicants. Therefore, it was prayed that they may be granted regular scale from the date of their first appointment and their services be also regularised and upgradation may also be given to them.

The management in written statement pleaded that there is no rule in the railway to make the employee permanent after putting 180 days of continuous service because employee become due for permanent after necessary screening. It is further pleaded that senior most staff according to their aggregate length of service has been made permanent against 25% quota. It is also pleaded that the staff who attained the temporary status after 12-7-93 has been given the benefit of revised scale alongwith arrear w.e.f. 1-1-1986 with increments. Regarding absorption the staff is made permanent against 25% quota. It was also submitted that there was no provision to grant scale prior to 12-7-73 and it was only after this date the revised scale is granted after completion of 120 days. The benefit of upgradation is also available to permanent employee. It was prayed that there is no merit in the reference and same may be rejected.

4. The reapplication also filed reiterating the claim made in the claim statement.

5. In evidence Roshan Lal filed his affidavit W1 and also documents W2 to W10. In cross-examination he admitted that he was appointed as casual workman in class III. The management in rebuttal produced MW1 Santosh Kumar who filed his affidavit E. M1 in evidence. In cross examination he deposed that para 1 of the claim statement is correct and all the workmen were working in class III from the very beginning and they were also given their

annual increment. He has also admitted that they were performing the same duties as were being performed by the regular employees in Class III posts. He denied that Mohinder Singh S/o Sohan Singh was working on daily wages and thereafter he was regularised. He has also denied that applicants were not given any chance for screening as there is no screening for class III. He has also admitted that there is a quota of 25% or promotion of artisan staff and 25% for direct recruitment. He has also denied that Roshan Lal was upgraded. He admitted that Roshan Lal was given the upgraded scale.

6. I have heard the Ld. counsel for the parties and have also gone through the evidence and record of the case. During the course of proceedings Jaswant Singh and Tarsem Lal had expired and their LR's have not been brought on record. The management has admitted the case of the workmen as pleaded in para No. 1 of claim statement. Regarding demand No. 1 all the workmen got the regular pay scale after completion of 120 days of service as admitted by the applicants in para 1 of the claim statement and they were also given their increments. Therefore, the demand No. 1 has already been met with by the management.

7. Regarding demand No. 2 it is also admitted that all the 10 workmen were regularised in their posts in accordance with the quota of 25% from artisan staff. Therefore, they were also given the pay scales of their respective posts when they were regularised. The applicants also claimed that they may be upgraded without subjecting them to screening test as per demand No. 3. It is categorically stated by the management witness that there is no screening test for the Class III posts. No document in evidence has been filed by the workmen to substantiate their claim that any screening test is required for Class III posts. Therefore, demand No. 3 of the applicants is nowhere proved and same is rejected. Regarding demand No. 4 that all the workmen/applicants may be regularised against 25% of departmental promotion quota. It is pleaded in claim statement itself that 25% quota has been fixed and the promotions can only be done against 25% quota meant for the concerned category and there was no post available against 25% department promotion quota and it was also nowhere proved by the workman by any oral or documentary evidence. One of the applicant Jaswant Singh was given all his benefits and nothing remained to be paid to him. The applicants failed to prove that anything has been left to be paid to them, therefore, I find no merit in the present reference and the same is answered against the workmen. Central Govt. be informed.

Chandigarh.

27-8-2003

S. M. GOEL, Presiding Officer

नई दिल्ली, 26 सितम्बर, 2003

का. आ. 3006.—ऑड्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोट्स

रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आईडी-नं. 156/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 25-09-2003 को प्राप्त हुआ था।

[सं० एल- 41011/27/91-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 26th September, 2003

S.O. 3006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (ID. No. 156/91) of the Central Government Industrial Tribunal/ Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Northern Railway and their workmen, which was received by the Central Government on 25-09-2003.

[No. L-41011/27/91-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH PRESIDING OFFICER

Shri S.M. Goel

Case No. ID 156/91

General Secretary,

Northern Railway Workers Union,

49/69, Harpal Nagar,

Ludhiana-141001 (Pb.)

... Applicant

V/s.

General Manager,

Northern Railway,

Baroda House,

New Delhi-110001

Divisional Railway Manager,

Norther Railway,

Ferozepur Cantt-152001

... Respondent

REPRESENTATIVES:

For the workman : Sh. B.N. Sehgal

For the management : Sh. N.K. Zakhmi

AWARD

(Passed on 3-9-2003)

The Central Govt. Ministry of Labour *vide* Notification No. L-41011/27/91-I.R. (D.U.) dated 30th October, 1991 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of Railway in (i) not regularising the services of the eleven workmen (list enclosed) (ii) not granting regular scale

of pay from the date of their first appointment and (iii) not granting the same benefits for upgradation etc. which are available to their colleagues working on regular basis is justified? If not, to what relief the workmen concerned are entitled to and from what date?”

2. In the claim statement it is stated that all the workmen mentioned in the reference were working in class III posts and they were granted regular scale when they were declassified on the different dates and they were also entitled to regular scale of class III posts after putting in 180 days of continuous service up to 21-3-1974. The above workmen were not absorbed although 25% quota was available for them. They also demanded increments after completion of 120 days of service. The applicants demanded that those workmen who were recruited prior to 21-3-1974 be granted regular scale of class III posts after putting in 180 days of service and those recruited after 21-3-1974 be granted regular scale after putting in 120 days of service alongwith arrears and increments and they may also be absorbed against permanent posts and upgradation alongwith 12% interests alongwith costs of the litigation. In the amended claim statement they also filed details of their claims.

3. In the written statement the management pleaded that all the workmen were engaged on daily wage basis for day to day requirement and were given temporary status after completion of 180 days of service up to 31-3-74 and onward after 31-3-1974 on completion of 120 days of service. They were up in grades and are being given increments regularly. Their services can not be regularised as they were never engaged against a permanent vacancy as class III posts is selection post and they should fulfil the requirement for the class III posts. It is admitted that petitioners were declassified as per their entitlement and were put in regular scale and arrears were also paid in accordance with the service conditions and on giving them temporary status they were also paid their arrears. It is further pleaded that 25% quota is fixed only for the appointment of class III posts through regular class IV employees and as the applicants were engaged on daily wage basis and got the temporary status they were not eligible for this quota. Other contentions of the applicants have also been denied by the management and prayed for the rejection of the reference.

4. Replication was also filed reiterating the claim made in the statement of claim by the applicants.

5. During the pendency of proceedings applicant Sushil Kumar expired and his LRs have been brought on record.

6. In evidence the workmen produced Shri Jaswant Singh as WWI who filed his affidavit Ex. W1. He admitted in cross-examination that he was engaged on casual basis on 12-12-1965 and he was given regular scale since 1975. No other evidence was led by the applicants. In rebuttal

the management produced Shri Ram Chander who filed his affidavit Ex. M1 and documents Ex. M2 to M6. During cross-examination the applicants got proved the documents Ex. W1/1 to W1/9 from the witness of the management, which are the instructions of the management issued from time to time.

7. I have heard the learned counsel for the parties and have gone through the evidence and record of the case. The first demand of the workmen is that they should be regularised in the services of the management. The applicants have not proved through any documentary evidence that permanent vacancies were available with the management and they were recruited against those permanent vacancies. It is admitted by the applicants in the claim statement itself they were daily wage workers and they were given temporary status and put in regular scale as and when they become eligible for the regular scale after putting in required service of 180 days before 31-3-1974 and 120 days after 31-3-1974. It is also revealed that they were not recruited through set procedure and as per their education qualification they were put in job as per requirement. It is also categorically pleaded in the written statement that on attaining the temporary status they were put in regular scales and also paid their arrears. Therefore, when there was no permanent vacancy the workmen could not be given regularisation. Similarly it is admitted case of the parties that the workmen were given regular pay scale when they complete 180 days of service prior to 31-3-1974 and 120 days of service after 31-3-1974. The applicants demanded that they should be given regular pay scale from the date of their first appointment which has not been proved by the workman by any evidence oral or documentary and under which rules and instructions of the management they were demanding the regular pay scale from the date of their first appointment. Therefore, I find no force in this demand of the workman also and the same is rejected.

8. Regarding the third demand that they should be granted the same benefits of upgradation which are available to their colleagues working on regular basis with the management. It is the case of the parties that 25% quota was available for upgradation for the artisan staff. It is admitted case of the applicants that first they were appointed on daily wage basis and they were not recruited as per the set procedure available for other regular cadre staff, and the conditions imposed regarding educational qualification etc. In the written statement also it is specifically pleaded by the management that these applicants were not eligible for the quota of 25% as they were not artisan from Class IV staff. Therefore, taking into consideration all facts and circumstances of the case, I find no merit in the present reference and the same is answered against the workmen. Central Govt. be informed.

Chandigarh

S.M. GOEL, Presiding Officer

नई दिल्ली, 29 सितम्बर, 2003

का. आ. 3007.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एवं इण्डिया लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में राष्ट्रीय ऑद्योगिक अधिकरण मुम्बई के पंचाट (संदर्भ संख्या Comp No. NTB- 1 of 2001 Arising out of Ref. No. NTB-1 of 1990) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-09-2003 को प्राप्त हुआ था।

[सं० एल- 20025/12/2003-आई आर(सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 29th September, 2003

S.O. 3007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. Comp. No. of NTB-1 of 2001 Arising out of Ref. No. NTB 1 of 1990) of the National Industrial Tribunal, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Air India Ltd. and their workmen, which was received by the Central Government on 19-9-2003.

[No. L-20025/12/2003-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE NATIONAL INDUSTRIAL TRIBUNAL AT MUMBAI

Present :

Presiding Officer : **JUSTICE S. C. PANDEY,**

Complaint No. NTB-01 of 2001

(Arising out of Ref. No. NTB-1 of 1990)

PARTIES:

Shri S.C.S. Adhikari : Complainant
Vs.

Air India Ltd. : Opp. Party

APPEARANCES:

For the Complainant : Mr. Mohan Bir Singh,
Advocate.

For the Opp. Party : Absent

State : Maharashtra

Mumbai, dated the 29th day of August, 2003

ORDER

Shri Mohan Bir Singh, Advocate for the Complainant.
The case was reserved for award. Before the Award could

be delivered Shri Mohan Bir Singh, Adv. made a mention today that he is filing an application for withdrawal of the complaint. Nobody present for the opposite party. This tribunal is of the view that it is not necessary to issue notice to the Opp. Parties for deciding this withdrawal application. The matter is similar abandoning of Suit as per Order 23 Rule (1) of the Code of Civil Procedure.

2. The party filing the complaint has every right to abandon the complaint even at a late stage without any conditions being attached to the order of withdrawal.

3. An Objection has been filed on behalf of the Indian Pilots Guilt, Mumbai by Capt. Vikrant Sansare, General Secretary before this Order was passed. It is not necessary to hear the parties for the reason neither the employer nor the IPG, Mumbai is prejudiced in any way by withdrawal of the complaint. The objection is rejected. It is held that it is not necessary to hear any of the opposite parties on the question of mere withdrawal of the application without any rights claimed by the complainant in respect of re-agitation of the same. Here, the Complainant merely abandoned his claim. The Complaint is dismissed as withdrawn.

S. C. PANDEY, Presiding Officer

नई दिल्ली, 30 सितम्बर, 2003

का.आ. 3008.—केन्द्रीय सरकार संतुष्ट हो जाने पर कि लोकहित में ऐसा करना अपेक्षित था, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (vi) के उपबंधों के अनुसरण में भारत सरकार के श्रम मंत्रालय की अधिसूचना सं. का.आ. 1306 दिनांक 7-4-2003 द्वारा किसी भी तेल क्षेत्र जो कि औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 17 में शामिल है, को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 16-4-2003 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित किया था;

और केन्द्रीय सरकार की राय है कि लोकहित में उक्त कालावधि को छः मास की और कालावधि के लिए बढ़ाया जाना अपेक्षित है;

अतः अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (vi) के परन्तुक द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए दिनांक 16-10-2003 से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा० सं० एस-11017/10/97-आईआर(पीएल)]

जे. पी. पति, संयुक्त सचिव

New Delhi, the 30th September, 2003

S.O. 3008.—Whereas the Central Government having been satisfied that the public interest so required that in pursuance of the provisions of sub-clause (vi) of the clause (n) of Section 2 of the Industrial Disputes Act,

1947 (14 of 1947), declared by the Notification of the Government of India in the Ministry of Labour No. S.O. 1306, dated 7-4-2003 the services in any Oil Fields which is covered by item 17 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947) to be a public utility service for the purpose of the said Act, for a period of six months from the 16th April, 2003.

And whereas, the Central Government is of opinion that public interest requires the extension of the said period by a further period of six months.

Now, therefore, in exercise of the powers conferred by the proviso to sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares the said industry to be a public utility service for the purposes of the said Act for a period of six months from the 16th October, 2003.

[No. S-11017/10/97-IR(PL)]

J. P. PATI, Lt. Secy.

नई दिल्ली, 30 सितम्बर, 2003

का.आ. 3009.—केन्द्रीय सरकार संतुष्ट है कि लोकहित में ऐसा अपेक्षित है कि बैंकिंग उद्योग में सेवाओं को जिसे औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की प्रथम अनुसूची की प्रविष्टि 2 के अन्तर्गत निर्दिष्ट किया गया है, उक्त अधिनियम के प्रयोजनों के लिए लोक उपयोगी सेवाएं घोषित किया जाना चाहिए।

अतः, अब, औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 2 के खण्ड (d) के उप-खण्ड (6) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार उक्त उद्योग को उक्त अधिनियम के प्रयोजनों के लिए तत्काल प्रभाव से छः मास की कालावधि के लिए लोक उपयोगी सेवा घोषित करती है।

[फा० सं० एस-11017/5/97-आईआर(पीएल)]

जे. पी. पति, संयुक्त सचिव

New Delhi, the 30th September, 2003

S.O. 3009.—Whereas the Central Government is satisfied that the public interest required that the services in the Banking Industry which is covered by item 2 of the First Schedule to the Industrial Disputes Act, 1947 (14 of 1947), should be declared to be a public utility service for the purposes of the said Act.

Now, therefore, in exercise of the powers conferred by sub-clause (vi) of clause (n) of Section 2 of the Industrial Disputes Act, 1947, the Central Government hereby declares with immediate effect the said industry to be a public utility service for the purposes of the said Act for a period of six months.

[No. S-11017/5/97-IR(PL)]

J. P. PATI, Lt. Secy.

नई दिल्ली, 1 अक्टूबर, 2003

का.आ. 3010.—कर्मचारी राज्य बीमा अधिनियम, 1948 (1948 का 34) की धारा 1 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा 1 नवम्बर, 2003 को उस तारीख के रूप में नियत करती है, जिसको उक्त अधिनियम के अध्याय 4 (44 व 45 धारा के सिवाय जो पहले ही प्रवृत्त हो चुकी है) अध्याय 5 और 6 [धारा 76 की उपधारा (1) और धारा 77, 78, 79 और 81 के सिवाय जो पहले ही प्रवृत्त की जा चुकी है] के उपर्युक्त हरियाणा राज्य के निम्नलिखित क्षेत्रों में प्रवृत्त होंगे, अर्थात् :—

“जिला गुडगांव में राजस्व ग्राम टिकरी हदबस्त संख्या-98”।

[सं० एस-38013/35/2003-एस एस-1]

के. सी. जैन, निदेशक

New Delhi, the 1st October, 2003

S.O. 3010.—In exercise of the powers conferred by sub-section (3) of Section 1 of the Employees' State Insurance Act, 1948 (34 of 1948) the Central Government hereby appoints the 1st November, 2003 as the date on which the provisions of Chapter IV (except Sections 44 and 45 which have already been brought into force) and Chapter V and VI [except sub-section (i) of Section 76 and Sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Haryana namely :—

“The Revenue Village Tikri Had Bast No. 98 in the District of Gurgaon.”

[No. S-38013/35/2003-SS. I]

K. C. JAIN, Director

नई दिल्ली, 19 सितम्बर, 2003

का.आ. 3011.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भा.को.को.लि. के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण-II, धनबाद के पंचाट (संदर्भ संख्या 67/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15-9-2003 को प्राप्त हुआ था।

[सं० एल-20012/68/96-आई आर (सी-1)]

एस.एस. गुप्ता, अक्तूबर सचिव

New Delhi, the 19th September, 2003

S.O. 3011.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 67/97) of the Central Government Industrial Tribunal/Labour

Court II, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workmen, which was received by the Central Government on 15-9-2003.

[No. L-20012/68/IR (C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT:

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947

REFERENCE NO. 67 OF 1997

Employes in relation to the Management of Bastacola
Area (No. IX) of M/s. BCCL

AND

Their Workmen

APPEARANCES:

On behalf of the workmen : Shri S. Bose,
Vice-President,
R.C.M.S. Union.

On behalf of the employers : Shri D.K. Verma,
Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, the 27th August, 2003

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/68/96-I.R. (C-I), dated, 10th June, 1997.

SCHEDULE

“Whether the claim of the Union that S/Sh. Sagar Bauri and 115 others as per list enclosed with the order of reference were the deemed workmen of the management of Bastacola Area of M/s. BCCL is legal and justified? If so, to what relief are these persons entitled ?”

2. The case of the concerned workmen according to the Written Statement submitted by the sponsoring union on their behalf in brief is as follows :—

The sponsoring union submitted that the coal from different collieries of BCCL including Bastacola Area No. IX is despatched by railway wagons and as well as by

trucks and both the systems are permanent and essential function of the establishment and all such employed persons are treated as regular departmental employees and as such the employees have specific status and placed in the agreements for pay and fringe benefits made to regular employees with other facilities in terms of the Wage Agreement between the management and the employees through their respective Trade Unions. They submitted that Kuya Colliery is one of the working Coal Mine under Bastocolla Area No. IX of BCCL. It is the contention of the sponsoring union that the concerned workmen are truck loaders and Kuya Colliery depot over the years continuously at the instance of the management and rendering service by physical strength and for the such job their are entitled to get wages as per the wage agreement plus other benefits but the concerned workmen are denied the rate of wages and other fringe benefits and they are paid paltry sum as fixed wages only and thereby depriving them all the service benefits of regular employees/truck loaders. They submitted that by rendering continuous service over years together though the concerned workmen have acquired the status of regular employees the management is showing discrimination against them in the matter of payment of wages as per NCWA and their regularisation. Accordingly the sponsoring Union represented the grievances of the workmen before the authorities of Kuya Colliery as well as at Area level to redress the grievances of the workman but did not yield any fruitful result and for which they raised an Industrial dispute before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal for adjudication. The sponsoring union accordingly submitted their prayer for regularisation of the concerned workmen with retrospective effect with all consequential benefits.

3. The management on the contrary after filing Written Statement-cum-rejoinder have denied all claims and allegation which the sponsoring union asserted in the Written Statement submitted on behalf of the concerned workmen. Management submitted since doors for fresh employment and regularisation are now a days closed in public sector unit, particularly in different unit of CIL including the BCCL. Different trade unions for some time past have taken resort to certain unethical unjustified and illegal methods for procuring job to the job seekers and these tendency amongst trade union has given a rise to the handsome number of disputes which cannot be termed as Industrial dispute under the I.D. Act, 1947. They submitted that the workmen who work in BCCL colliery or unit are either departmental workmen of the colliery or are the labours of their contractors. The departmental workmen of the BCCL after 1973 are issued employment letters, I.D. Cards etc. and these workmen remain under direct control and employment of the company and are governed by the Company's certified Standing Order. They are enrolled in the statutory Form B Register and they receive their wages

through pay slips from the management counters. They submitted that those who are the contractors labours and are employed in the company through trucks are also issued I.D. Cards by the concerned contractor in accordance with the provision of Contract Labour (Regulation and Abolition) Act, 1970 and rules made therein. These labourers receive their wages through their contractors as per rules. They submitted that the claim of the concerned workmen do not fall either of the two categories referred to above as they were neither the departmental workmen of the management nor the workmen of the contractors. They were never issued appointment letters, I.D. cards, Pay slips etc. by the management nor their names and details were mentioned in the statutory Form B Register of the Company. They were not the contractors labours since their names were not given by any contractor to the management. Thus in all eventualities these workmen are strangers and job seekers through the present designed dispute. They submitted that initially supply of coal to FCI Sindri used to be made through railway wagons but as Railway wagons scarce and the production at FCI Plant suffered adversely for that non-availability and short supply of coal due to irregular availability of railway wagons FCI Sindri in order to over come the situation deployed the transport contractor for transportation of coal with the help of contractors and as per the arrangement between the FCI and certain transport contractors the responsibility for loading transporting of coal and unloading the same at the FCI stockyard was vested with the Transport contractor and according to loading and transporting agreement between the FCI and the transport contractor FCI had to pay the charges of loading transporting unloading of coal to the transporting contractor.

4. They submitted that they have their own pay loaders to mechanically load coal in the railway wagons as well as in the trucks and always deploy pay loaders for effecting loading of coal in the railway wagons and in the trucks. However, while transporting coal from certain coal depot inferior coal may be available and for the purpose of selective loading from the depot the management of FCI used to prefer to get the same loaded by their own contractor and to load the same at their stockyard. In such situation FCI Transport contractors engaged their labours both for the purpose of loading at colliery depot and for unloading the same at the FCI Stockyard. Accordingly the management submitted that no employer employee relationship existed between them and the concerned workman. They are out right strangers and being strangers placed their demand for employment illegally. They submitted that they did not engage contract labour in loading and unloading of coal in the railway wagons and trucks. For supply to different consumers they engaged their own wagon loaders and pay loaders for loading coal. In case where the purchasers intend to load coal as per their selection, facilities is offered to such purchaser by

the coal company to select the coal and to get loaded in their trucks. In that process they bring their own labours and load coals in the trucks. Accordingly such outside persons/loaders cannot demand employment under the management of the coal company. In view of the facts and circumstances stated above the management submitted that there is no merit in the claim of the concerned workmen and for which they are not entitled to get any relief. Accordingly the management have prayed to pass award rejecting the claim of the concerned workmen.

5. The points to be decided in this reference are :

“Whether the claim of the Union that S/Sh. Sagar Bauri and 115 others as per list enclosed with the order of reference were the deemed workmen of the management of Bastacolla Area of M/s. BCCL is legal and justified ? If so, the what relief are these persons entitled?”

FINDINGS WITH REASONS

6. It transpires from the record that the sponsoring union have examined three witness in order to substantiate their claim while management examined two witnesses as MW-1 and MW-2 in support of their claim. It is the specific contention of the sponsoring union that the concerned workmen were employed as regular departmental employees and for which they have acquired specific status and placed in the agreement to receive pay and other benefits to made to the regular employees as per NCWA. They submitted that these workmen were employed by the management to load coal in the trucks from Kuya Colliery and in this way they discharged their duties continuously for years together. It is the claim of the sponsoring union that though these workmen under the management for years together the management intentionally refused to pay wages as per the provisions of NCWA. Accordingly they submitted their grievances before the management for relief but as the management refused to pay any importance to their grievances they raised industrial dispute through the sponsoring union. Management on the contrary denying the claim of the concerned workmen submitted that two types of workers work in the BCCL colliery. They are either departmental workmen of the company or the labourers of the contractors. They submitted that in case of departmental workmen after 1973 management issued employment letters, I.D. Cards etc. to them and they are governed by the company's certified Standing Order. They are also enrolled in the company's statutory register and they also receive their wages through pay slips from the management's pay counter while those who are contractors labourers and are employed in the company through contractor are also issued I.D. Card by the contractors in accordance with the provision of Contract Labour (Regulation and Abolition) Act, 1970 and rules made

therein. These labourers receive their wages from the contractors as per rules. They submitted that the concerned workmen were neither direct departmental workmen of the management nor they were contractors labourers. They were never issued appointment letters, pay slips etc. by the management, nor their names and details recorded in the statutory Form B Register. They were also not contractors labourers since their names were never given by the contractor to the management. It is the contention of the management that they used to sell coal not only to different unit but also to the Fertilizer Corporation of India at Sindri through rails. They submitted that initially coal was despatched to Fertilizers Corporation of India plant Sindri through rail but due to non-availability of railway wagons supply of coal to the said Fertilizer Corporation of India, Sindri deployed their own contractors for transportation of coal by road with the help of contractors. As per arrangement between the Fertilizer Corporation of India and certain transport contractor responsibility for loading and transporting of coal and unloading the same at the Fertilizer Corporation stockyard was of the transport contractor and accordingly loading, transporting of coal and unloading agreement between the Fertilizer Corporation of India and the transport contract the Fertilizer Corporation have to pay charges of loading, transporting and unloading coal to the transport contractor. They further submitted that they have their own pay loaders to mechanically load all coal in the railway wagons as well as in the trucks and always deployed Pay loaders for effecting loading of coal in the railway wagons as well as in the trucks. However, while transporting coal certain coal depot inferior quality of coal may be available and for the purpose of selective loading from the depot the management of Fertilizer Corporation of India preferred to get the same loaded by their own contractors and to load the same at their stockyard. In such situation Fertilizer Corporation of India used to engage transport contractors and the said transport contractors engaged their own labours both for the purpose of loading coal at the colliery depot and for unloading the same to the Fertilizer Corporation of India's stockyard. Therefore, considering the contention of the management it transpires that they never deployed any outside workmen other than their own men or contractor engaged by them to load coal either in the railway wagon or in the trucks. It further transpires that from Kuya colliery to coal stokyard a chunk of coal was to be despatched to Fertilizer Corporation of India's plant at Sindri. Initially such coal was to be despatched through railway wagon but due to non-availability of railway wagons the Fertilizer Corporation of India, Sindri decided to take coal from Coal stockyard of Kuya Colliery with help of road transport and for which they engaged contractor, for the interest of despatch of coal at their stockyard from Kuya Colliery depot through trucks. Those contractors accordingly deployed their own workers for loading coal from colliery depot in the trucks and unloading

the same at the Fertilizer Corporation of India stockyard. Management categorically denied about their involvement for engaging any contractor in the matter of despatching coal to Fertilizer Corporation of India plant or at any other place. Now considering the submission of the sponsoring union and the management's claim are it transpires that. While the sponsoring union submitted that the concerned workmen were employed by the management for loading coals in the trucks and railway wagons from colliery stockyard the management submitted that they did not have any relation with the concerned workmen in any manner whatsoever. While it is the contention of the sponsoring union that the concerned workmen worked under the management for long years the management submitted that the so-called workers never were engaged and worked under them. MW-2 during his evidence disclosed that as loading inspector he was engaged at Kuya colliery from 26-10-1996 to 6-3-2002. I find corporation of the facts disclosed by the management from the evidence of this witness. This witness categorically disclosed in course of his evidence that as railway wagons were not available the management of Sindri Fertilizer Corporation of India requested the colliery management to transport coal from the said colliery through contractors deploying their own contractors and labourers. Thereafter the Transport Contractor of Fertilizer Corporation of India. Sindri started loading coal in the trucks with the help of their own men for transportation of coal. He further disclosed that apart from the Fertilizer Corporation of India, other customers also used to collect coal from their colliery through their own transport Agent. He disclosed that initially wagons were loaded with coal with the help of Pay loaders but as there was scarce of wagons despatch of coal was started through trucks. Transport contractors of the respective company used to deploy to their own contractor for loading coal from the coal depot. He disclosed that as loading inspector his duty was to supervise their workmen in the matter of loading coal. He categorically denied engagement of the concerned workmen as wagon loaders for loading coals in the trucks or railway wagons by the management. He denied the fact of payment of wages to the concerned workmen by the management. He also denied the fact that they used to note attendance of the concerned workmen in the colliery. They never maintained the attendance register or wage sheets for the workmen. In course of his evidence he categorically denied the existence of any register marked as Ext. W-1 and W-2 series, maintained by the management. Those registers do not bear any signature and seal of any official of the management. During cross-examination he further admitted that about 200—250 persons were engaged by the contractors of different transport companies for loading coal every day for transportation. He further disclosed CISF was incharge of releasing trucks and workers for loading coal from the entry point. For safety reason well ahead the

contractors informed the management about the number of trucks to be placed for the purpose of loading coal. Thereafter the management used to hand over the number of the said contractors to him and thereafter he used to allow the trucks for loading coal after being satisfied the genuinity of the truck in question, with the number supplied by the contractors and its men. On the contrary WW-1, WW-2 in course of their evidence submitted that as wagon loaders they were deployed by the management to load coal in the wagons as well as in the trucks and in this way they discharged their duties for long years. In support of this claim WW-1 during his evidence relied on their attendance registers marked as Ext. W-1 collectively and payment Register marked as Ext. W-2 series. During cross-examination this witness admitted categorically that in the attendance register their existence were noted as private labours of private trucks. He also admitted that he purchased blank Attendance register and blank Payment register from Tara Press. They admitted that entries therein were filled up by him and also admitted that it did not bear any signature of any official of the management. This witness during his evidence have failed to give any satisfactory explanation why those registers were not produced before the RLC(C), Dhanbad at the time of hearing of conciliation proceeding. Considering the evidence of WW-1 it is clear that the registers in question which they relied marked as Ext. W-1 and W-2 series which were never maintained by the management. No evidence is forthcoming to show that those registers were prepared, maintained in connection with loading of coals in the trucks from colliery depot. As such I consider that those registers did not have any evidentiary value in the eye of law to uphold the claim of the concerned workmen. WW-3, an employee of the management and was Branch Secretary of R.C.M.S. Union at Kuya Branch. This witness also in course of his evidence has failed to produce a single scrap of paper to show that the concerned workmen were deployed by the management as wagon loaders for loading coal in the railway wagon or in the trucks. In course of hearing the sponsoring union have failed to produce a single scrap of paper to show either the concerned workmen were employed by the management or they are the employees of the contractors who are engaged by the management as per the contract. It has been submitted by the representative of the concerned workmen that loading of coal by the men of the contractor is a prohibited category of job as per Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970. The said representative further submitted that the management never paid wages to the concerned workmen as per the provision laid down in NCWA. Before taking into consideration of these two points it is to be looked into if the concerned workmen were employed by the management as of their departmental worker or they were engaged by the contractor being appointed by them. Onus absolutely rests on the sponsoring Union to substantiate this claim. It is the specific claim of the management that Fertilizer

Corporation of India Sindri for smooth flow of coal in the plant requested the management to allow them to load coal in the trucks through their own contractors as smooth flow of railway wagons were seriously affected. It is the contention of the management that thereafter Fertilizer Corporation of India Sindri through their own transport contractor used to load coal in the trucks for transportation to their stockyard. Accordingly, the management disclosed that they were not at all interested actually how many workers the transport contractors used to engage for loading coal in the trucks and which wages they used to pay to their own workmen. The representative of the concerned workmen excepting the registers marked as Ext. W-1 and W-2 series have failed to submit a single scrap of paper to show that the management in order to evade their responsibility have created a story that the concerned workmen had no manner of involvement with them. The representative of the concerned workmen in course of hearing relied on the Award passed by the learned Tribunal No. I, Dhanbad. I have carefully considered the Award passed by the learned Tribunal No. I, Dhanbad in connection with Ref. 105/1990. Just relying on the award there is no scope to say that the claim of the concerned workmen for their regularisation will be considered automatically. Accordingly there is no scope at all to arrive into any conclusion that the concerned workmen were the employees of the management just relying on the Award passed by the learned Tribunal No. I, Dhanbad. Every case has its own independent merit and claim and the same are to be established with reasonable certainty. The registers which the concerned workmen produced marked as Ext. W-1 and W-2 series appears to have been created for the interest of this case. Relying on these registers there is no scope to say that the concerned workmen were the workmen of the management. Moreover, onus absolutely rests on the sponsoring union to establish that they worked under the contractor engaged by the management. I do not like to raise any dispute that the job of coal loading and unloading comes within the prohibited degree as per notification published in the Gazette of India, Part II, Section 3, Sub-section (ii) dt. 21-6-1988. The management categorically denied the fact of engagement of the concerned workmen for loading and unloading of coal in trucks. They disclosed that trucks of Fertilizer Corporation of India Sindri and other unit used to load coal through their contractor and own men and for which they had no control over the same. The sponsoring union in course of evidence has failed to substantiate this fact that the concerned workmen were the men of the contractors engaged by them. until and unless it is so established there is no scope to fix up any responsibility upon the management for regularisation of the concerned workmen. It is not expected that management should be answerable for engagement of any labour by the contractor engaged by Fertilizer Corporation of India Sindri Plant or by any other unit. Therefore, after careful consideration of all the facts and circumstances I consider

that the sponsoring union have failed to establish with minimum satisfaction that the concerned workmen were engaged by the management either departmentally or through their own contractor and for which I consider that the claim of regularisation of the concerned workmen or claim of wages as per NCWA by the concerned workmen finds no merit. In the result, the following Award is rendered :

"Whether the claim of the Union that S/Sh. Sagar Bouri and 115 others (as per list enclosed) were the deemed workmen of the management of Bastacolla Area of M/s. BCCL is not legal and justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer

List of Workmen

F. No. L-20012/68/96-IR(C-I)

NAME	FATHER/HUSBAND'S NAME
1	2
S/Shri	S/Shri
1. Sagar Bouri	Lt. Buchu Bouri
2. Anil Bouri	Lt. Buchu Bouri
3. Gopall Bouri-I	Santosh Bouri
4. Gopal Bouri-I	Santosh Bouri
5. Fulchand Mahato	Lt. Satish Mahato
6. Open Bouri	Lt. Chottu Bouri
7. Satish Manjhi	Lt. Kanhai Manjhi
8. Madon Bouri	Maga Bouri
9. Lalmohan Bouri	Bilas Bouri
10. Mohan Bouri	Budhu Bouri
11. Sandhiya Kamin	Choraklal Bouri
12. Buli Kamin	Sagar Bouri
13. Kajli Kamin	Sagar Bouri
14. Sohan Rajwar	Lt. Banru Rajwar
15. Sahadeo Rajwar	Lt. Banru Rajwar
16. Montu Rajwar	Lt. Banru Rajwar
17. Bachchan Rajwar	Mantu Rajwar
18. Gogo Rajwar	Lt. Budhu Rajwar
19. Nandlal Rajwar	Lt. Fagu Rajwar
20. Biswanath Rajwar	Lt. Putukchand Rajwar
21. Choltu Rajwar	Lt. Lambu Rajwar
22. Birbal Rajwar	Lt. Mahendi Rajwar
23. Shankar Rajwar	Lt. Kalpu Rajwar
24. Rathu Rajwar	Shankar Rajwar
25. Rawan Rajwar	Lt. Doman Rajwar
26. Samlal Rajwar	Gulab Rajwar
27. Dashrath Rajwar	Jaideo Rajwar

1	2	1	2
28. Jaideo Rajwar	Lt. Shambhu Rajwar	73. Indradeo Rai	Gangu Rai
29. Bhutnath Rajwar	Lt. Jhundu Rajwar	74. Ramlakhan Manjhi	Bisun Manjhi
30. Ashok Singh	Kedar Singh	75. Ramchalitar Das	Lt. Bazir Das
31. Kangress Bouri	Sohan Bouri	76. Mahesh Singh	Kirtibans Singh
32. Ajit Rai	Lt. Nagendranath Rai	77. Mahabir Rajwar	Jyoti Rajwar
33. Bepal Mahato	Bahadur Mahato	78. Dhaneshwar Singh	Ramcharan Singh
34. Durga Modi	Laloo Modi	79. Naresh Paswan	Anek Paswan
35. Asni Rai	Mochiram Rai	80. Ramchandra Das	Neuratan Das
36. Sukhdeo Bhuiyan	Lt. Jageshar Bhuiyan	81. Malti Kamin	Niloo Rajwar
37. Sunti Devi	Lt. Jageshar Bhuiyan	82. Sawiti Kamin	Babulal Karmakar
38. Shobha Bhogta	Shipti Bhogta	83. Balika Kamin	Lodi Bouri
39. Rajendra Rabidas	Mahadeo Rabidas	84. Ramjee Bhuiyan	Rupchand Bhuiyan
40. Nanku Bhuiyan	Jethu Bhuiyan	85. Subhas Rajwar	Ratan Rajwar
41. Kuleshwar Bhuiyan	Nanku Bhuiyan	86. Karmu Rajwar	Purna Rajwar
42. Bhutka Bouri	Rathu Bouri	87. Susil Singh	Lt. Khedan Singh
43. Putuna Kamin	Bhutka Bouri	88. Prem Rajwar	Haribol Rajwar
44. Nimai Modi	Lt. Ranjit Modi	89. Rudni Kamin	Madan Bouri
45. Chiniya Modi	Lt. Ranjit Modi	90. Peyarelal Rewani	Rasolal Rewani
46. Balu Mahato	Lt. Gobardhan Mahto	91. Mahendra Saw	Osir Saw
47. Pasupati Rajwar	Yoti Rajwar	92. Aminas Singh	Ramanand Singh
48. Sanatan Manjhi	Sarkar Manjhi	93. Dilip Bouri	Haru Bouri
49. Budhani Kamin	Sanatan Bhuiyan	94. Ashish Singh	Rajkumar Singh
50. Sahadeo Modak	Lt. Jairam Modak	95. Brahmadeo Ram	Gangoo Ram
51. Ishwar Manjhi	Lt. Manshu Manjhi	96. Ramchandra Saw	Ozir Saw
52. Anand Bouri	Lt. Yogendo Bouri	97. Bhagta Malakar	Ramlal Malakar
53. Mihir Bouri	Lt. Bandhu Bouri	98. Tiguna Kamin	Anil Bouri
54. Bonai Manjhi	Bodi Manjhi	99. Ajay Rajwar	Lt. Badri Rajwar
55. Durga Manjhi	Sona Ram Manjhi	100. Manoj Singh	Niwaran Singh
56. Tula Kamin	Iswar Modi	101. Hiralal Singh	Jitai Singh
57. Anchal Kamin	Rameshwar Modi	102. Rampravesh Singh	Nitai Singh
58. Pagla Bhuiyan	Parmeshwar Modi	103. Udit Narain Singh	Baldeo Singh
59. Parwati Kamin	Ramlal Bhuiyan	104. Ashok Kr. Singh	Bhagoram Singh
60. Mahesh Bhuiyan	Parmeshwar Bhuiyan	105. Ahlad Rajwar	Sitaram
61. Gita Kamin	Rambilas Bhuiyan	106. Bajjnath Rajwar	Bolai Rajwar
62. Krishna Bhuiyan	Rupchand Bhuiyan	107. Suresh Bhuiyan	Rambriksh Bhuiyan
63. Mukteshwar Modi	Anadi Modi	108. Kartik Mukherjee	Lt. Natwar Mukherjee
64. Kartik Bhuiyan	Bandhan Bhuiyan	109. Bidhan Chatterjee	Lt. Guhiram Chatterjee
65. Nepura Modian	Chinichh Modi	110. Trilochan Hazra	Lt. Kishori Mohan Hazra
66. Aptari Modian	Nimai Modi	111. Prakash Bhandari	Kenaram Bhandari
67. Sukhlal Mali	Lt. Devi Mali	112. Pardip Mukherjee	Lt. Hare Krishna Mukherjee
68. Chhamoni Kamin	Chhatia Manjhi	113. Vikash Kr. Bhandari	Kenaram Bhandari
69. Manohar Bouri	Sripati Bouri	114. Biswatha Singh	Lt. Gama Singh
70. Gopal Bhuiyan	Bisu Bhuiyan	115. Sachidanand Singh	Bisesar Rai
71. Suratlal Das	Bindi Das	116. Lakhikant	Sotun Bouri
72. Badri Das	Chitawan Das		

नई दिल्ली, 9 अक्टूबर, 2003

का.आ. 3012—केन्द्रीय सरकार, बीड़ी कर्मकार कल्याण निधि अधिनियम, 1976 (1976 का अधिनियम सं. 62) की धारा 10 के अनुसरण में, वर्ष 2002-2003 के लेखाओं का विवरण और उक्त अधिनियम के अधीन वित्तपोषित क्रियाकलापों की रिपोर्ट क्रमशः अनुसूची-I और अनुसूची-II के अनुसार प्रकाशित करती है।

अनुसूची I

वर्ष 2002-2003 के लिए बीड़ी कर्मकार कल्याण निधि का लेखा विवरण

आय

1-4-2002 को आरम्भिक अतिशेष	31.93 करोड़
वर्ष 2002-2003 के दौरान तरित उपकर	84.15 करोड़
उत्पाद शुल्क बीड़ियों के उपकर की दर 2 रु प्रति हजार	116.08 करोड़

कुल आय

व्यय

मुख्य शीर्ष-2230

01.109 बीड़ी कर्मकार कल्याण निधि

01.109.05 - प्रशासन

लेखा शीर्ष	एकक	रकम (हजार में)
05.00.01	वेतन	21534
05.00.02	मजदूरी	217
05.00.03	समयोपरि भत्ता	71
05.00.11	यात्रा भत्ता	1674
05.00.13	कार्यालय व्यय	5513
05.00.14	भाटक, दर और कर	1351
05.00.16	प्रकाशन	53
05.00.27	लघु संकर्म	475
05.00.28	वृत्तिक सेवाएं	56
05.00.50	अन्य प्रभार	28
योग		30972

01.109 बीड़ी कर्मकार कल्याण निधि

01.109.04 - स्वास्थ्य

लेखा शीर्ष	एकक	रकम (हजार में)
04.00.01	वेतन	142733
04.00.02	मजदूरी	1456
04.00.03	समयोपरि भत्ता	11
04.00.11	यात्रा भत्ता	2647
04.00.13	कार्यालय व्यय	7309

लेखा शीर्ष	एकक	रकम (हजार में)
04.00.14	भाटक, दर और कर	7038
04.00.16	प्रकाशन	32
04.00.21	सामग्री और प्रदाय	30725
04.00.26	विज्ञापन और प्रकाशन	65
04.00.27	लघु संकर्म	52328
04.00.31	सहायता अनुदान	496
04.00.50	अन्य प्रभार	6611
04.00.51	मोटर यान	8409
04.00.52	मशीनरी उपस्कर	217
योग		260077

01.109 बीड़ी कर्मकार कल्याण निधि

01.109.03 - शिक्षा

लेखा शीर्ष	एकक	रकम (हजार में)
03.00.26	विज्ञापन और प्रकाशन	164
03.00.34	छात्रवृत्ति और वृत्तिका	246120
03.00.50	अन्य प्रभार	23625
योग		269909

01.109 बीड़ी कर्मकार कल्याण निधि

01.109.02 - मनोरंजन

लेखा शीर्ष	एकक	रकम (हजार में)
02.00.01	वेतन	505
02.00.03	समयोपरि भत्ता	5
02.00.11	घरेलू यात्रा व्यय	32
02.00.13	अन्य प्रभार	11
02.00.27	लघु संकर्म	953
02.00.50	अन्य प्रभार	749
योग		2255

01.109 बीड़ी कर्मकार कल्याण निधि

01.109.01 - गृह निर्माण

लेखा शीर्ष	एकक	रकम (हजार में)
01.03.01	वेतन	63
01.01.31	स्व गृह निर्माण स्कीम-सहायता अनुदान	94919
01.02.33	समूह गृह निर्माण स्कीम-सहायिका	0
कुल (सहायिका)		94982

लेखा शीर्ष	एकक	रकम (हजार में)
मुख्य शीर्ष-3601, ई डब्ल्यू एस-01.00.31-सहायता अनुदान		0
मुख्य शीर्ष-4250, एफ.ए-07.0031-सहायता अनुदान		15
मुख्य शीर्ष-6250, ऋण, 04.00.55-ऋण और अग्रिम		0
कुल (गृह निर्माण)		94997
कुल योग		658210
कुल आय		116.08 करोड़
कुल व्यय		65.82 करोड़
तारीख 1.4.2003 को बीड़ी कर्मकार कल्याण निधि के अधीन आरक्षित निधि		50.26 करोड़

अनुसूची 2

वर्ष 2002-2003 के दौरान बीड़ी कर्मकार कल्याण निधि के अधीन वित्तपोषित क्रियाकलाप

क्रम संख्या	क्रियाकलाप का नाम	एकक
क. स्वास्थ्य		
1.	स्थिर-सह-सचल/स्थिर एलोपैथिक और स्थिर आयुर्वेदिक औषधालय	207
2.	बीड़ी कर्मकारों के लिए अस्पताल	4
3.	निर्माणाधीन अस्पताल	3
4.	यक्षमा रोग से पीड़ित कर्मकारों का घरेलू उपचार	494
5.	केंसर से पीड़ित कर्मकारों का उपचार	54
6.	मानसिक रोग से पीड़ित कर्मकारों का उपचार	05
7.	कुष्ठ रोग से पीड़ित कर्मकारों का उपचार (जिसके अन्तर्गत घरखाता कर्मकार भी हैं)	13
8.	ऐनकों के क्रय के लिए बीड़ी कर्मकारों को वित्तीय सहायता	1790
9.	महिला बीड़ी कर्मकारों के लिए प्रसूति फायदा स्कीम	3809
10.	बीड़ी कर्मकारों को बंध्याकरण के लिए धन संबंधी प्रतिकर का संदाय	433
11.	हृदय रोग के संबंध में बीड़ी कर्मकारों का उपचार	29
12.	गुर्दा प्रत्यारोपण के संबंध में बीड़ी कर्मकारों का उपचार	03
	ख. सामाजिक सुरक्षा	
13.	समूह बीमा स्कीम	*
ग. गृह निर्माण		
14.	समन्वित आवास स्कीम के अधीन स्वीकृत मकानों की संख्या	5742
	घ. शिक्षा	
15.	बीड़ी कर्मकारों के स्कूल जाने वाले बच्चों के लिए छात्रवृत्ति और वित्तीय सहायता देना	329714
	ड. मनोरजन	
16.	श्रव्य-दृश्य सैटों/सिनेमा यानों के माध्यम से बीड़ी कर्मकारों को फिल्मों का प्रदर्शन	68
17.	बीड़ी कर्मकारों के लिए खेलकूद, क्रोड़ा, सामाजिक और सांस्कृतिक क्रियाकलापों का आयोजन करना	11

*इसके अन्तर्गत सभी पहचान पत्र धारक बीड़ी कर्मकार आते हैं।

[फा० सं० एस-24025/5/2003-डब्ल्यू-II]
मनोहर लाल, महानिदेशक (श्रम कल्याण)/संयुक्त सचिव

New Delhi, the 9th October, 2003

S.O. 3012.—In pursuance of Section 10 of the Beedi Workers Welfare Fund Act, 1976 (Act No. 62 of 1976), the Central Government hereby publishes the statement of accounts and the report of the activities financed under the said Act, for the year 2002-2003 as per Schedule-I and Schedule-II, respectively.

SCHEDULE I**STATEMENT OF ACCOUNTS OF BEEDI WORKERS WELFARE FUND FOR THE YEAR 2002-2003****INCOME:**

Opening Balance as on 01-4-2002 : 31.93 Crores
 Cess Transferred during the year 2002-2003 : 84.15 Crores
 Rate of Cess Rs. 2 per thousand of Exciseable Beedis

TOTAL INCOME : **116.08 Crores**

EXPENDITURE:**Major Head—2230****01.109. Beedi Workers Welfare Fund****01.109.05.—Administration**

(Rs. in Thousands)

Head of Account	Units	Amount
05.00.01	Salaries	21534
05.00.02	Wages	217
05.00.03	Over Time Allowances	71
05.00.11	Travelling Allowances	1674
05.00.13	Office Expenses	5513
05.00.14	Rents, Rates and Taxes	1351
05.00.16	Publication	53
05.00.27	Minor Work	475
05.00.28	Professional Services	56
05.00.50	Other Charges	28
TOTAL		30972

01.109. Beedi Workers Welfare Fund**01.109.04—Health**

(Rs. in Thousands)

Head of Account	Units	Amount
04.00.01	Salaries	142733
04.00.02	Wages	1456
04.00.03	Over Time Allowances	11
04.00.11	Travelling Allowances	2647
04.00.13	Office Expenses	7309
04.00.14	Rents, Rates and Taxes	7038
04.00.16	Publication	32
04.00.21	Material and Supply	30725

Head of Account	Units	Amount (Rs. in Thousands)
04.00.26	Advertisement and Publication	65
04.00.27	Minor Work	52328
04.00.31	Grants-in-aid	496
04.00.50	Other Charges	6611
04.00.51	Motor Vehicle	8409
04.00.52	Machinery and Equipment	217
	Total	260077

01.109. Beedi Workers Welfare Fund

01.109.03.—Education

Head of Account	Units	Amount (Rs. in Thousands)
03.00.26	Advertisement and Publication	164
03.00.34	Scholarship and Stipend	246120
03.00.50	Other Charges	23625
	Total	269909

01.109. Beedi Workers Welfare Fund

01.109.02—Recreation

Head of Account	Units	Amount (Rs. in Thousands)
02.00.01	Salaries	505
02.00.03	Over Time Allowances	5
02.00.11	Domestic Travelling Expenses	32
02.00.13	Office Expenses	11
02.00.27	Minor Work	953
02.00.50	Other Charges	749
	Total	2255

01.109. Beedi Workers Welfare Fund

01.109.01—Housing

Head of Account	Units	Amount (Rs. in Thousands)
01.03.01	Salaries	63
01.01.31	Build Your Own House Scheme—Grant-in-Aid	94919
01.02.33	Group Housing Scheme—Subsidy	0
	Total (Subsidy)	94982
	Major Head-3601, EWS-01.00.31—Grant-in-Aid	0
	Major Head-4250, F.A.-07.00.31—Grant-in-Aid	15
	Major Head-6250 Loans, 04.00.55—Loans & Advances	0
	Total (Housing)	94997
	GRAND TOTAL	658210

TOTAL INCOME	116.08 Crores
TOTAL EXPENDITURE	65.82 Crores
RESERVE FUND UNDER BEEDI WORKERS WELFARE FUND	50.26 Crores
Ason 01-04-2003	

SCHEDULE-II**ACTIVITIES FINANCED UNDER THE BEEDI WORKERS WELFARE FUND DURING THE YEAR 2002-2003**

Serial Number	Name of the Activity	Units
A. HEALTH:		
1.	Static-cum-Mobile/Static Allopathic and Static Ayurvedic Dispensaries	207
2.	Hospitals for the Beedi Workers	4
3.	Hospitals under construction	3
4.	Domiciliary Treatment of Beedi Workers suffering from Tuberculosis	494
5.	Treatment of Beedi Workers suffering from Cancer	54
6.	Treatment of Beedi Workers suffering from Mental Diseases	05
7.	Treatment of Beedi Workers (including Gharkhata Workers) suffering from Leprosy	13
8.	Financial Assistance to Beedi Workers for purchase of Spectacles	1790
9.	Maternity Benefit Scheme for Female Beedi Workers	3809
10.	Payment of Monetary Compensation for Sterilisation to Beedi Workers	433
11.	Treatment of Beedi Workers in respect of Heart Diseases	29
12.	Treatment of Beedi Workers in respect of Kidney Transplantation	03
B. SOCIAL SECURITY:		
13.	Group Insurance Scheme	*
C. HOUSING:		
14.	Number of houses sanctioned under Integrated Housing Scheme	5742
D. EDUCATION:		
15.	Award of Scholarship and other financial assistance to the school going children of Beedi Workers	329714
E. RECREATION:		
16.	Exhibition of films for Beedi Workers through Audio-Visual Sets/Cinema Vans	68
17.	Organising sports, games, social and cultural activities for Beedi Workers	11

*All Identity Card holders of Beedi Workers are covered.

[F. No. S-24025/5/2003-W-II]
MANOHAR LAL, Director General (Labour Welfare)/Jt. Secy.